

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 21-CR-92

BAHRULLAH NOORI,

Madison, Wisconsin

October 24, 2022

Defendant.

9:06 a.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF EVIDENTIARY HEARING
HELD BEFORE THE HONORABLE STEPHEN L. CROCKER
(**TRANSCRIPT OF DIGITAL RECORDING**)

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney
BY: TAYLOR KRAUS
Assistant United States Attorney
222 West Washington Avenue, Ste. 700
Madison, Wisconsin 53703

Also appearing: Mark Meyers, Special Agent

For the Defendant:

Federal Defender of Wisconsin, Inc.
BY: JOSEPH BUGNI
ELIZABETH BLAIR
22 East Mifflin Street, Ste. 1000
Madison, Wisconsin 53703

Also appearing: Bahrullah Noori, defendant
Ron Cagel - paralegal
Interpreter Samadey
Interpreter Saidi

Lynette Swenson RMR, CRR, CRC
Court Reporter
United States District Court
120 North Henry Street, Rm. 410
Madison, Wisconsin 53703

I-N-D-E-X

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1 (Proceedings called to order.)

2 THE CLERK: Case No. 21-CR-92. *The United*
3 *States of America v. Bahrullah Noori* is called for an
4 evidentiary hearing. May we have the appearances,
5 please.

6 MS. KRAUS: Good morning, Your Honor. Taylor
7 Kraus for the United States. With me at counsel table is
8 Special Agent Mark Meyers with the FBI.

9 THE COURT: Good morning to both of you.

10 MR. BUGNI: Good morning, Your Honor. Joe Bugni
11 and Beth Blair from our office, as well as Ron Cagel, our
12 paralegal, and Bahrullah Noori, who is present here with
13 an interpreter.

14 THE COURT: All right. Good morning to all of
15 you as well. Please be seated. Mr. Noori, good morning.

16 All right. Let's begin by swearing our current
17 interpreter. Let's do both, both interpreters, please.
18 Please raise your right hands.

19 (Interpreters sworn.)

20 THE COURT: All right. Thank you. Please be
21 seated. Gentlemen, thank you for assisting today. I
22 understand that you will be switching out on a regular
23 basis. We will accommodate you however you need to be
24 accommodated, so either give me a signal or do what you
25 need to do and we will oblige what needs to happen. Any

1 questions right now?

2 THE INTERPRETER: Your Honor, every half hour if
3 we can take turn.

4 THE COURT: Okay. And if I forget, I'm sure the
5 attorneys will give me the hi sign. But about every half
6 hour.

7 THE INTERPRETER: (Unintelligible), please.

8 THE COURT: We can do that. Okay.

9 Next, for the benefit of counsel and the witnesses,
10 we are recording this electronically. We do not have a
11 court reporter. So it is important that when you're
12 speaking, you're near a microphone.

13 Also with regard to COVID protocols, you may wear
14 your masks if you choose to. When you're sitting at your
15 own table, you do not have to. But when you are actually
16 speaking, we do need you at least to drop your mask if
17 you choose to wear it so that the microphone accurately
18 can pick up what you're saying, okay?

19 In terms of other housekeeping matters, we will
20 switch every half hour for the benefit of the
21 interpreters. We will take a morning break for everybody
22 at some convenient and logical point. I'll let the
23 attorneys perhaps suggest when that ought to be. When it
24 comes time for a lunch break, we will talk about how long
25 and so forth. But I want to make this work for all of

1 you. The point today and tomorrow is to make as complete
2 and accurate an evidentiary record for both sides as we
3 can so that everybody has the information in the record,
4 the evidence in the record that you want the Court to
5 consider when it reviews your legal arguments on the
6 motions. So do not be shy about asking the Court to
7 accommodate you in some fashion.

8 There's no jury here. We can add much more to the
9 record than might be the case in front of a jury because
10 we can always sort that out later. I would rather be
11 overly complete than to miss something. Okay?

12 With that then, I'll also note something that may be
13 the subject of a motion. Under Federal Rule of Evidence
14 615, I will sequester witnesses. So, of course, the case
15 agent gets to stay throughout the case. Government
16 witnesses would then have to appear one at a time and
17 otherwise stay out in the hallway or elsewhere. I know
18 the defense is planning on calling witnesses tomorrow.
19 The same Rule 615 ruling would apply to defense witnesses
20 tomorrow.

21 That said, let's see if -- oh, one more part before
22 I check in. I have received and read the joint factual
23 stipulation of the parties. That's Docket 61. So those
24 facts are of record. Nobody has to refer to those. I
25 have accepted those.

1 I'm going to check in with each side, and as part of
2 that, I'd like each side to let me know is there any
3 objection to your opponent's evidentiary submissions or
4 exhibits? If everybody is willing to let all of the
5 exhibits in, then I will just grant those motions at the
6 outset so nobody has to worry during witness testimony
7 about laying a foundation or authenticating exhibits and
8 then putting them into the record.

9 With that, Ms. Kraus, the floor is yours.

10 MS. KRAUS: Thank you, Your Honor. I wanted to
11 first note that the government's first witness, Sergeant
12 Andrew Schwartz, is in the courtroom right now. He can
13 step out in the hallway if you'd like, but because we're
14 not taking testimony, he is in here, just so everybody --

15 THE COURT: That's fine, because the rule is not
16 aimed at that.

17 MS. KRAUS: So with respect to the exhibits, I
18 do not have an objection to the admittance of the
19 exhibits attached to the original motion to suppress. I
20 believe those were lettered exhibits. No objection
21 there.

22 Attorney Bugni and -- as well as Attorney Blair and
23 I agreed that the government's exhibits that are listed,
24 I believe in Docket 59 -- excuse me, 56, can be admitted.
25 I would just note that Exhibits 5A and 6A I intend to use

1 for demonstrative purposes rather than physically enter
2 those into the evidence because they are physical items.
3 Exhibit 5 and 6 are photographs of the same objects, so
4 there will be photographic evidence in the record as well
5 pertaining to those.

6 Other than that, I don't have any other matters to
7 address.

8 THE COURT: Understood. So I want to make sure
9 I'm tracking, Ms. Kraus. On October 21, which would have
10 been Friday -- I'm sorry, October 20, Thursday, the Court
11 received as Docket 59 the defense exhibit list.

12 MS. KRAUS: I do object to the admittance of
13 those exhibits; however, it's my understanding that
14 defense prepared those for impeachment purposes and may
15 not be actually admitting them at the hearing. But I
16 would admit or would object to admitting those exhibits
17 en masse.

18 THE COURT: Okay. I'm not going to look for
19 trouble at this point so I'm not going to quiz you down
20 as to which ones or why. Mr. Bugni, that segues rather
21 naturally to you. You have an open mic as well.

22 MR. BUGNI: Thank you, Your Honor. We have no
23 problem with the government's going en masse as a correct
24 agreement. And I believe the agreement is that the ones
25 we attached in July to our motion, those all come in.

1 What we have -- we didn't know all the government's
2 witnesses, so we prepared as if we had everybody that
3 could possibly be called. We'll lay the foundation and
4 bring those in that we need to throughout the trial or
5 throughout the hearing. Sorry. So we have no problem
6 going old school when it comes to that.

7 THE COURT: Okay.

8 MR. BUGNI: If I may, I've been sick for, like,
9 the last four days, so Ms. Blair is going to be doing
10 actually most of the hearing. Five COVID tests;
11 negative. But so the only thing that I had, Your Honor,
12 was it would be helpful for the defense, especially in
13 how much we cross, to know what the government's legal
14 theory is as to why -- you know, to support this, given
15 the fact that we're all agreeing that Mr. Noori is in
16 federal custody pretty early on, whether it's within 30
17 minutes or two hours, I believe that could be the
18 difference of it. And we want to cut down our
19 cross-examinations as well. To the extent that things
20 aren't really going to be disputed, then we're not going
21 to ask questions about it. But to the extent we have to
22 make all the possible factual arguments that we could
23 for -- to rebut legal arguments, so if we could have a
24 short proffer from the government just to know what is
25 really in dispute here, that would be helpful.

1 THE COURT: Did you front this request with
2 Ms. Kraus before the hearing?

3 MR. BUGNI: Yes, Your Honor.

4 THE COURT: Okay. Well, we'll get there
5 momentarily. So the record is clear, I am admitting all
6 of the government's exhibits as listed in Docket 56, and
7 I am admitting into evidence all of the exhibits that
8 were attached to the original motion to suppress. I
9 don't have that docket number in front of me, but I think
10 it's clear from the record what those are. And as
11 Mr. Bugni put it, we'll go old school with the rest of
12 them.

13 MS. BLAIR: Your Honor, I apologize for
14 interrupting. We have a small update to our exhibit
15 list, just including two additional exhibits that were
16 attached to the motion to suppress. If I may pass this
17 up?

18 THE COURT: If you wish, yeah. Has Ms. Kraus
19 seen those as well?

20 MS. BLAIR: I provided her a copy as well.

21 MS. KRAUS: Yes, Your Honor.

22 THE COURT: Received. Thank you. Ms. Kraus,
23 back to you then. A, do you object to providing a legal
24 proffer? B, if not, what is it?

25 MS. KRAUS: I'd like to start with the fact that

1 Attorney Bugni called me at 8:15 to discuss whether I'd
2 provide a legal proffer this morning with respect to my
3 argument. So approximately one hour ago is when he
4 fronted this issue. Although he filed this motion in
5 July and we were set for a hearing in August, at that
6 point he didn't ask me for a legal proffer either. So,
7 Your Honor, frankly I think I'm unprepared to provide a
8 legal offer that I'm going to be bound to in subsequent
9 briefing.

10 But I will note I don't dispute that Mr. Noori was
11 in federal custody soon after his arrest. But I do
12 dispute several of the other allegations that are
13 contained in the motion. And while I can appreciate that
14 Mr. Bugni wants a proffer so that he can cut down on
15 cross-examination, I don't feel comfortable making an
16 exact legal argument without knowing how the facts are
17 going to come in.

18 But I do dispute that, one, that any delay was
19 unreasonable with respect to presentment. I also dispute
20 that 5A is the procedure under which this Court should
21 analyze the facts in this case. I think there's a
22 different procedure we need to look at contained in 5B,
23 which requires that upon a warrantless arrest, any
24 criminal complaint be filed promptly. So that's all I
25 feel comfortable saying at this point. I would have been

1 happy to have discussed this further with Attorney Bugni
2 and believe I made it clear I was available all weekend.
3 I spoke with Attorney Blair last week and I was not
4 contacted until 8:15 this morning.

5 THE COURT: Understood. As I made clear a
6 moment ago, I do not intend to exceed anybody's comfort
7 levels this morning, so I'm not going to require you to
8 say anything else at this point. But thank you for what
9 you've offered.

10 Ms. Blair, Mr. Bugni, does that help at all?

11 MR. BUGNI: Yeah.

12 THE COURT: Okay.

13 MR. BUGNI: I mean we're okay with either one.
14 We have, in fairness, been asking since July, but not
15 asking for a proffer. But, you know, we're okay to do it
16 whatever way you want, Your Honor. And, you know, we'll
17 try not to be exhaustive in the cross-examinations. If
18 it's really 5A or 5B, if it's, you know, unreasonable,
19 that's sort of where we thought it was headed. You know,
20 we'll be good to go.

21 THE COURT: Sure. And again, I wanted to get to
22 the witnesses as quickly as possible. But 5A is more
23 concrete, and either you've met the deadlines or you
24 haven't, and then the question is would there be some
25 exception. 5B is more ethereal, so I don't think it's a

1 surprise to anyone that that is the direction in which
2 the government intends to head. But as I indicated to
3 Ms. Kraus, I'm not going to hold her to anything at this
4 point. Let's make the evidentiary record.

5 I think we're ready to start. Any other preliminary
6 matters from either side before the government calls its
7 first witness?

8 MR. BUGNI: Not from the defense, Your Honor.

9 THE COURT: Are we ready to go?

10 MS. KRAUS: Yes, Your Honor.

11 THE COURT: Please call your first witness.

12 MS. KRAUS: The government calls Lieutenant
13 Andrew Schwartz -- excuse me, Sergeant Schwartz.

14 THE COURT: A field promotion, I suppose.

15 THE WITNESS: I'll take it, Your Honor.

16 THE COURT: Up here.

17 **ANDREW SCHWARTZ, GOVERNMENT'S WITNESS, SWORN,**

18 THE COURT: Please be seated, Sergeant. There's
19 water to your left, if you'd like it. And if you're
20 comfortable, please take your mask off. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 MS. KRAUS: Is the witness sworn, Your Honor?

23 THE COURT: I'm sorry?

24 MS. KRAUS: Was the witness sworn?

25 THE COURT: He was.

ANDREW SCHWARTZ - DIRECT

1 MS. KRAUS: Okay. Thank you.

2 **DIRECT EXAMINATION**

3 BY MS. KRAUS:

4 Q Can you please state your name for the record,
5 please.

6 A Andrew Richard Schwartz.

7 Q And Mr. Schwartz, what do you do for a living?

8 A I'm a police officer currently at Fort McCoy.

9 Q What title do you hold?

10 A Patrol sergeant.

11 Q How long have you worked for the Fort McCoy Police
12 Department?

13 A Since 2017.

14 Q Prior to that were you employed as a law enforcement
15 officer?

16 A I was a police officer in Alaska.

17 Q How long in total would you say that you've been a
18 law enforcement officer?

19 A Since January of 2011.

20 Q Within that time, have you received any specialized
21 training or been responsible for specialized
22 investigations?

23 A Yes. I specialize in child forensic interviews. I
24 was the child forensic interviewer for my agency in
25 Alaska. The basic course that I went to was CornerHouse

1 in Minnesota, and then I've had some advanced child
2 forensic interviewing since then.

3 As far as other advanced stuff for investigations,
4 that's it in relation to the child forensic portion of
5 it. There's other things in different criterias for
6 interviewing techniques and armor schools and firearms
7 training, that type of stuff.

8 Q Now, going to your role as patrol sergeant at Fort
9 McCoy, generally can you describe what you do on a
10 day-to-day basis?

11 A The bread and butter at Fort McCoy is traffic stops,
12 as some people are aware in this room. So the majority
13 of things that we deal with are going to be the traffic
14 infractions, you know, OWIs, things of that nature,
15 speeding violations. When the units are there, training.
16 We get a lot of 911 calls, ambulatory calls, traffic
17 accidents, and, you know, suicidal ideation, that type of
18 thing. Every once in awhile there might be some assaults
19 or some domestic violence crimes that come about.

20 Q Under normal operations at Fort McCoy, what kind of
21 hours do you work?

22 A So I work 12 hours normal shift, and then a half
23 hour overtime before that 12 hours and half hour after.

24 Q Under normal operations, what kind of call volume
25 would you respond to or would the Fort McCoy Police

1 Department respond to?

2 A It depends on what time of the year. Usually
3 it's -- like, for instance, this time of year it would be
4 pretty slow; not a lot of call volume with the exception
5 of maybe some car/deer accidents or vehicle versus
6 vehicle, some 911 calls for, you know, some ambulatory
7 patients, fire department calls, and every once in awhile
8 some larceny or an assault or something like that. But a
9 very -- a very low vol column -- call volume at this time
10 of year historically since I've been there.

11 Q Generally is this a relatively quiet police
12 department?

13 A Yes. Actually I've -- in comparison to the Alaska
14 police department, I consider this a retirement job. So,
15 yes, I would say that this is a very calm police
16 department.

17 Q I want to turn your attention to September of 2021.
18 Was there anything that happened at Fort McCoy that
19 changed essentially how Fort McCoy Police Department
20 operated?

21 A The Operation Allies Welcome, with them coming to
22 Fort McCoy, there was a significant amount of individuals
23 that had come that we weren't necessarily prepared for,
24 and it was a huge influx in call volume, both for -- you
25 know, for a variety of reasons. And it was a significant

1 amount of -- I mean a lot of the officers that, you know,
2 wouldn't normally have experience are getting experience
3 during their tenure there; got a lot of good experience
4 in regards to, you know, different things that would have
5 happened.

6 Q Sergeant Schwartz, you referenced "them coming to
7 Fort McCoy." Can you please clarify or explain what you
8 mean.

9 A So Operation Allies Welcome, the Afghan mission
10 overseas ended and so we received -- I want to say Fort
11 McCoy received around 13,000 or more at a time that were
12 stationed there at Fort McCoy living in the barracks in
13 varying blocks and they had different D cell -- not D
14 cells, excuse me, barracks rooms and then mayor cells and
15 chow halls and then interpreter stations, things of that
16 nature that were set up around the post.

17 Q When you refer to 13,000 people, are you referring
18 to Afghan civilians?

19 A Yes.

20 Q And does Fort McCoy typically house 13,000 foreign
21 nationals at the barracks?

22 A Foreign nationals, no. But there is the ability to
23 house more than that in troop capacity.

24 Q In your experience on Fort McCoy, has there been a
25 time where 13,000 people were living on base?

1 A During the summertime there is usually, depending on
2 the missions for that year, there's usually a significant
3 amount of soldiers that come there to train. And so they
4 will fill up the barracks on post and then they will
5 oftentimes fill up the different FOB locations throughout
6 Fort McCoy as well.

7 Q Now, with respect to Operation Allies Welcome and
8 the Afghani civilians that were at Fort McCoy, did this
9 change how Fort McCoy Police Department was able to
10 handle call volume?

11 A It was significantly different and challenging, not
12 just because of the call volumes that were coming in, but
13 also because of the language barrier and different social
14 dynamics that we weren't prepared for.

15 Q Did you end up working more or less time than your
16 usual shift during this period?

17 A There was a lot of times where there was mandated
18 overtime and overtime that was, you know, given out with
19 basically whoever wanted it. We were short staffed
20 anyways and so to have this influx of people with a short
21 staff anyways created -- I mean it was call to call to
22 call and, you know, you'd have ten calls holding after
23 you cleared that first one, which is not normal for Fort
24 McCoy operations.

25 Q I want to turn to a specific call you might have

1 responded to on September 11 of 2021. Did you respond to
2 a allegation of a sexual assault?

3 A I did, yes.

4 Q And how were you alerted to this?

5 A Via radio.

6 Q And at the time you were made aware of this
7 allegation, what did you know?

8 A There was an allegation of a possible child abuse
9 at -- I don't remember the building number at the
10 location. Officer Herzog was going to respond. Due to
11 my background, I responded as well to give him some
12 assistance.

13 Q And at this time, were you under the impression this
14 involved some of the Afghan civilians that were housed at
15 Fort McCoy?

16 A Yes.

17 Q Now, you said you responded to the barracks?

18 A It was like a mayor cell location. So each block
19 had, like -- there was one mayor cell. And the main
20 mayor cell had, like, you know, all the higher ups and
21 everything else, and they kind of coordinated with all
22 the smaller individual mayor cells around the post. And
23 those smaller individual mayor cells were broken down
24 into where they kind of took control over blocks, as we
25 called them. And so the building number -- again, I

1 don't remember it off the top of my head, but that mayor
2 cell for that block is where we responded to.

3 Q Now, I'm listening to your description of a mayor
4 cell. Is it fair to say this is some sort of
5 administrative headquarters for each block of barracks?

6 A Yes, ma'am. That's where the interpreters would be,
7 that's where the people for the -- those who are living
8 in the barracks in those blocks would come to for
9 assistance or if they had a problem or if they needed
10 meal cards or, you know, things of that nature, for the
11 administrative purposes, yes.

12 Q So you arrived to a mayor cell corresponding to a
13 specific barracks. And what did you do?

14 A We made contact with a father, two children, and two
15 interpreters and, you know, he gave us a breakdown of
16 what was going on as far as the allegations. And we were
17 -- he didn't speak very good English and so we were using
18 the interpreters to converse with him to see what had
19 happened. And then they came out with the allegations
20 of, you know, his nephew and his son had been sexually
21 assaulted and/or molested by an individual.

22 Q You've referenced two interpreters were there. Did
23 you arrange for these interpreters?

24 A No. So one of them was already on scene, and we had
25 called for an interpreter to meet us there because at

1 this point in the mission, it was fairly new and there
2 wasn't a lot of interpreters to go around, and so calling
3 ahead of time was key because they usually came from
4 different portions of the base because not every block
5 had an interpreter. And so one of them specifically was
6 an interpreter that we had called for and the big mayor
7 cell sent them down. One of the people that was there
8 was somebody who the mayor cell was using as an
9 interpreter and he was actually one of the guests as
10 well, but he had, like, a vest on that they were using
11 for him and he was helping them for the block operations.

12 Q So just to clarify, one of these interpreters was
13 more of an official interpreter and one sounds like it
14 may have been a volunteer that was being utilized within
15 the block for ease of convenience.

16 A Hundred percent, yes, ma'am.

17 Q Okay. Now, you referenced that you spoke via
18 interpreter with the complaining witness. Did he provide
19 any details about who had allegedly committed these
20 assaults?

21 A They had said that Mr. Noori was in the building
22 that they resided in. And in the second floor, I can't
23 remember -- I can't remember if it was the day before or
24 that day, there was -- he had gone into the restroom and
25 had observed him taking off his nephew's clothes. And he

1 had gotten very upset and started yelling and got really
2 mad at his nephew for letting Mr. Noori take his clothes
3 off. And I don't remember the father -- the father made
4 mention that he was taking his clothes off to have sex
5 with him. Whether that was his actual interpretation or
6 what, I don't know. That's what he said. And then he
7 said that he --

8 Q I want to stop you there.

9 A Yes, ma'am.

10 Q I don't want to go into the details of what was
11 said.

12 A Oh.

13 Q I'd like to track back to whether or not the father
14 identified who had committed the alleged assaults.

15 A Yes.

16 Q And he did that on scene at the barracks?

17 A Yes, ma'am. And then we confirmed as we brought
18 Mr. Noori to the patrol car and had him visually identify
19 him as well.

20 Q Okay. At this point when you are speaking with the
21 father, could you describe his demeanor or his behavior?

22 A He was very upset, emotional, and very angry,
23 making words that, you know, if we weren't going to do
24 anything about it, then he would; that he was going to,
25 you know, go find him and take matters into his own

1 hands.

2 Q Did you take that to mean the father was expressing
3 a desire to physically confront the alleged assaulter?

4 A The father had made words that if we didn't do
5 something about the allegations, that he was going to
6 find Mr. Noori and beat him up.

7 Q Okay.

8 A So...

9 Q At any point while you were speaking with the
10 complaining witness, were any other witnesses or nonlaw
11 enforcement officers present?

12 A At the time that we originally started talking to
13 him and made contact, it was just us in a small group.
14 But then as the call volume went on, there was a larger
15 group that started to gather, both around the mayor cell
16 area and then later around the barracks where we had gone
17 to find Mr. Noori.

18 Q So just so I'm understanding your answer, a crowd
19 started to form as you were speaking with the witness on
20 scene.

21 A Yes.

22 Q Okay. And did that give you any concern?

23 A It did. At the time, there was a group of
24 military-aged males that were walking around and they
25 would -- it was found out later they would kind of act as

1 like a vigilante-type group, so they would kind of be
2 like the different blocks' enforcement, so to speak. A
3 lot of guests would give them money and then they would
4 do favors and stuff for them. These people had also, you
5 know, caused some fights and everything else. Basically
6 we were concerned about the crowd gathering and there
7 being concern for his safety at that location, so we were
8 trying to get everybody -- you know, control the crowd
9 and then get everybody -- get all the information we
10 could and then take care of it.

11 Q I want to clarify your answer about concerns with
12 the crowds. You referenced guests. Could you tell me
13 who you're referring to when you use the phrase or the
14 word "guests."

15 A So the Afghanistans that came to Fort McCoy, we
16 referred to them as guests.

17 Q Okay. And you also referenced a group of
18 military-aged males that you were concerned about from
19 other experiences. Are you referring to other guests or
20 military members?

21 A Other guests.

22 Q Okay. Now going back to your interview on scene
23 outside the barracks, at any point did you make a
24 decision to locate Mr. Noori? And I'm going to pause
25 here.

1 THE COURT: Right. We're switching
2 interpreters. (Pause at 9:35 a.m.)

3 Let's continue.

4 Q Okay. I'll repeat the question for the interpreter.
5 At any point, did you make the decision to locate and
6 speak with Noori, who'd been identified by the father?

7 A Yes.

8 Q Okay. And where did you find him?

9 A Mr. Noori was located in the barracks building that
10 the father and his nephew and son resided at, on the
11 second floor.

12 Q And did you go into the barracks itself to find him?

13 A We did not originally. We had soldiers that worked
14 the block and the soldier -- one of the soldiers for that
15 area had located him for us, and we asked him to bring
16 him down to the front entrance of the building. But I
17 didn't want to keep him around there because there was a
18 massive crowd that was gathering around that front
19 barracks area right there, so I was trying to get him
20 away from that.

21 Q Did you speak with him outside when he was brought
22 down by those soldiers?

23 A Yes.

24 Q What, if anything, did you tell him?

25 A I told him that he needed to come with us to answer

1 some questions about some allegations. I didn't go into
2 details about it because there was a crowd there that
3 hardly spoke English. I didn't feel like it was their
4 business knowing his business. I asked him to gather his
5 personal belongings, or anything that he didn't want left
6 in the barracks, with him. I told him I didn't know how
7 long he'd be with us, and he asked to go back upstairs to
8 go gather his belongings.

9 Q Did you let him go back upstairs?

10 A Yes. He went back up to the second floor, grabbed
11 his ID, some cash -- I don't remember all exactly that he
12 grabbed, but we captured it on a DA Form 4137, the items
13 that he had, and then I went upstairs with him while he
14 gathered them.

15 Q So you were present with him when he collected his
16 belongings.

17 A Yes.

18 Q At any point during this interaction did you have
19 your gun drawn?

20 A No.

21 Q At any point during this interaction was he
22 handcuffed?

23 A Not during the initial contact, no.

24 Q And after he gathered his belongings, did you take
25 him anywhere else?

1 A Yes. I took him down to my patrol car and we took
2 him over to the patrol car by the mayor cell, and then I
3 handcuffed him before I put him in the back of my vehicle
4 per department policy.

5 Q And at any point when you took him from the barracks
6 to your squad car, did you draw your gun?

7 A No, I never drew my firearm.

8 Q Okay. And did you physically touch him at all while
9 he was being placed in the squad car?

10 A I had physical control of him as I escorted him over
11 to my patrol car, yes.

12 Q And did you, beyond escorting him to the squad car,
13 did you use any physical force against him?

14 A No.

15 Q While you -- what was your plan once you had him in
16 the squad car?

17 A The plan was to take him back to the police
18 department and have the FBI continue an investigation
19 with him.

20 Q Did -- I know you referenced another officer had
21 come out to respond with you. Did that officer come with
22 you back to the police station?

23 A So Officer Herzog had arrived on scene with me. I
24 informed him to collect 850s, an investigative data
25 sheet, on the father, the nephew, and the son. And then

1 the interpreters that were helping us, I told them -- and
2 I told him to gather information in the mayor cell
3 because, again, there was a large cell going on. I
4 didn't want him to do it outside. And I told him not to
5 ask so many questions or get any statements from them
6 unless it was something that the father initially wanted
7 to give a statement. But I said to not get anything
8 other than the investigative or the information data
9 sheet and then meet me back at the police department.

10 Q Once you are at the police station with -- first,
11 let me back up. Did you positively identify this person
12 as Bahrullah Noori?

13 A So after I had put Mr. Noori in my patrol car, I
14 walked over to the father and I asked if this was the man
15 who he was talking about and he said yes, that is the
16 person.

17 Q Okay. And at this point did you know his last name
18 or one of his names was Noori?

19 A Yes.

20 Q Okay. So once you are at the police station with
21 Mr. Noori, what did you do?

22 A I took Mr. Noori into one of the investigative rooms
23 that we have and I got a information data sheet on him,
24 an 850, which is an administrative form. I told him the
25 purpose for being there, and we conversed a little bit.

1 And I told him that I wouldn't be interviewing him and
2 that the FBI would be talking to him and I wasn't going
3 to ask him any questions.

4 Q At this point, were you using an interpreter to
5 speak with Mr. Noori?

6 A At that immediate point, no, I don't believe so.
7 Mr. Noori spoke or speaks broken English and -- he had
8 made mention about being, like, an English speaker at one
9 of the locations in Afghanistan and so we were able to
10 converse just fine with each other.

11 Q And you just testified that you essentially told him
12 why he was at the police station. What exactly did you
13 tell him about that?

14 A I told him that there were allegations about him,
15 you know, being sexual with some little boys and that
16 whether -- you know, that was not something that was
17 allowed here in America. And he made mention that was
18 not illegal in, you know, Afghanistan. And I said well,
19 you're not in Afghanistan. You're in America. And I
20 understand it may be okay over there, but in America,
21 it's not okay for that. So, you know, that's why he's
22 there. And then we -- he kept wanting to know
23 information about it, and I said, you know, sir, I don't
24 -- I can't talk to you about this. An FBI agent is going
25 to come here and converse with you.

1 Q Based on your conversation with him, did it appear
2 he understood what you were telling him with respect to
3 why he was there?

4 A Yes, because he kept asking questions about it. But
5 then after -- after some time would pass by, he would
6 reask the questions again and we would go through the
7 same process of explaining it to him.

8 Q Now at this point while you're going through this
9 paperwork and answering some preliminary questions, was
10 he handcuffed?

11 A No, I took the handcuffs off as soon as we got back
12 to the station.

13 Q Okay. And what kind of room did this interaction
14 occur in?

15 A I'm not sure exactly about the size, but it's an
16 enclosed office space with a giant window that you could
17 see through one way.

18 Q This was not a jail cell.

19 A No, this was an interview room. So there's a table,
20 some chairs, and then it does require a key access to get
21 out.

22 Q About how long did you stay in this room with
23 Mr. Noori?

24 A I don't know about the exact time. Over a half
25 hour.

1 Q And during this time, how did Mr. Noori appear to
2 you?

3 A Nervous, which is understandable for somebody who's,
4 you know, in that position and at a police station being
5 questioned for something. That's the only thing out of
6 the norm I would say that I observed.

7 Q Was he crying?

8 A He did get emotional a couple of times, yes.

9 Q Would you say that he was emotional to the point of
10 hysteria?

11 A No.

12 Q Was he hyperventilating at all?

13 A No.

14 Q Did he appear to you extremely confused and
15 completely unaware of what was going on?

16 A No. But like I did say, he did keep repeating the
17 same questions and then they would get answered and then
18 he would wait some time and ask them again.

19 Q While you were speaking with him in this room, did
20 he ask you for any creature comforts?

21 A I think he asked to use the restroom.

22 Q Did you let him?

23 A Yes.

24 Q Did you provide him with any food or water?

25 A I think somebody had brought him a bag of chips or

1 something.

2 Q And did he appear --

3 A But he didn't ask for it, we just brought it to him.

4 Q Did he -- did he eat it?

5 A Yes.

6 Q Do you know if he drank any water?

7 A Not while I was there with him, but I believe that
8 he was -- either drank out of the water fountain when he
9 went to use the restroom and then later on he had been
10 brought some liquids, yes.

11 Q At any point during this conversation with him in
12 this room did you draw your gun?

13 A No, I never drew my firearm during the entire time I
14 was with Mr. Noori.

15 Q At any point did you use any kind of physical force
16 on him during this conversation?

17 A The only force I utilized was I had my hand on his
18 arm as I walked him to my patrol car when I first
19 encountered him.

20 Q But with respect to your interaction with him at the
21 police station, did you use any physical force?

22 A No.

23 Q At any point did you threaten him?

24 A No.

25 Q At any point did you observe anyone use physical

1 force or threaten him?

2 A No.

3 Q Now, after you completed this paperwork with him,
4 what, if anything, was done?

5 A We were trying to find out when an FBI agent would
6 be able to come and meet with him. The agent had to
7 coordinate a forensic interview for the children and so
8 it was determined that he would be staying in one of the
9 D cells. And I wasn't there during that portion of it --
10 I mean I was, but I didn't escort him to the D cell. We
11 were trying to find somebody to watch him, like an MP or
12 somebody from the mayor cell to come there and relieve
13 me, because again, we were very short staffed and I was
14 needed to go take additional calls.

15 Q But you just used the phrase MP. What do you mean?

16 A Military police.

17 Q Okay. And do you know where Mr. Noori was
18 ultimately housed?

19 A At one of the D cells at the police department.

20 Q I'm going to show you what's been marked as Exhibit
21 -- government Exhibit No. 2. Do you see that?

22 A Yes, ma'am.

23 Q Okay. And what are we looking at here?

24 A That's the entrance to the D cellblock.

25 Q And I see -- is there a sign on this door or this

1 hallway here?

2 A Yes, there is.

3 Q And what is that number?

4 A 119.

5 Q And is this the area and the station where Mr. Noori
6 would have been housed?

7 A Yes.

8 Q Okay. And to clarify, is this at the Fort McCoy
9 police station?

10 A It is, yes.

11 Q And is this within the actual station itself?

12 A Yes. So right down -- so let's go ahead and say
13 that this hallway is facing north. Just to the east of
14 it, if you were to turn east, your immediate right is
15 where the interview room is.

16 Q And so does this cellblock or this hallway contain
17 more than one cell?

18 A Yes.

19 Q And do you know how many cells?

20 A I believe there's three or four.

21 Q Do you recall what cell Mr. Noori was ultimately
22 placed in?

23 A I do not.

24 Q Okay. After you finished this paperwork with
25 Mr. Noori, did you do anything else in connection to this

1 investigation?

2 A No. Again, I informed Mr. Noori that somebody would
3 be there to talk to him. I informed him that he would
4 have to stay the night here and somebody would be here
5 tomorrow to talk to him.

6 MS. KRAUS: I don't have any further questions
7 for this witness.

8 THE COURT: Very well. Cross-exam.

9 MS. BLAIR: Yes, Your Honor. Thank you.

10 **CROSS-EXAMINATION**

11 BY MS. BLAIR:

12 Q Good morning, Officer.

13 A Morning, ma'am. How are you?

14 Q I'm good. How about you?

15 A Good. Thank you.

16 Q I want to ask you just a couple of questions about
17 your investigation and also what the government went
18 through with you, okay? I first would like to talk about
19 the timing of how everything happened. So initially a
20 report is made of some sort of abuse; right?

21 A Correct.

22 Q And that report is made at 8:15 p.m. Does that
23 sound correct?

24 A It was during the evening. I don't remember the
25 exact time.

- 1 Q Okay. So there's a binder in front of you.
- 2 A Okay.
- 3 Q And that binder has all the reports in the case.
- 4 Would it refresh your recollection to look at a case
- 5 report to let you know what time?
- 6 A It would.
- 7 Q Okay. So I'd like you to look -- there's an initial
- 8 timeline, then I'd like you to look at Bates 170, which
- 9 is Exhibit -- tell you right here -- Exhibit 130. Could
- 10 you turn to that, please?
- 11 A 1-3-0.
- 12 Q And I believe it's an incident log.
- 13 A So 1-3-0, I have an 8:50, an 8:50 and an 8:50,
- 14 unless it's on the next page. Okay. The CAD, yes.
- 15 Q Yes. Perfect. And you're familiar with the CAD?
- 16 A Yes, ma'am.
- 17 Q And what time does it look like the initial report
- 18 came in?
- 19 A 21:04.
- 20 Q Okay. 21:04 is?
- 21 A 9:04 p.m.
- 22 Q All right. Great. And then you were able to
- 23 respond very quickly to this incident; correct?
- 24 A Yes, ma'am. My call sign at the time was 2-1.
- 25 Q I'm sorry?

1 A My call number at the time was 2-1. Looks like I
2 arrived at 21:06.

3 Q Okay. So immediately after the incident was called
4 in.

5 A Yes.

6 Q And you also were able to have interpreters with
7 you. It seems like one was a formal interpreter and one
8 was an Afghanistan civilian or a guest?

9 A Yes, ma'am. There was one on scene, and prior to us
10 arriving, we had called and asked for one to meet us
11 there, who then showed up as we were there.

12 Q And when you were interviewing the complaining
13 witness, the father, you did that outside of the presence
14 of Mr. Noori?

15 A Yes.

16 Q Okay. And so Mr. Noori presumably was not aware
17 that you were interviewing this complaining witness?

18 A At the time; correct.

19 Q And you stated during direct that you made the
20 decision that no one else should be interviewed. Can you
21 explain that? Perhaps I misunderstood you, that no one
22 should talk to the complaining witness or that no one
23 should be interviewed in the barracks.

24 A So during forensic interviews with children, you're
25 not -- the more you interview a child, the more the story

1 -- the more the stories change just because of their
2 maturity levels and things of that nature. So you don't
3 want to talk to children more than you have to. It
4 wasn't my case, the FBI was doing it. We weren't going
5 to talk to the children.

6 As far as talking to the father and getting his
7 statement, again, this isn't my case. I don't know how
8 -- we didn't want to get involved more than we had to as
9 far as getting people's information.

10 Q So is it fair to say that you didn't interview
11 anyone else on scene except for speaking to the father,
12 the complaining witness?

13 A Correct.

14 Q You didn't interview anyone else in the barracks.

15 A No.

16 Q Okay. And you're familiar with these barracks?

17 A Yes.

18 Q About how many guests were housed in the barracks
19 that Mr. Noori and the complaining witness were in?

20 Approximately.

21 A So they changed a lot with the amount of people that
22 they were putting in barracks just so they could fit
23 them. I mean they had beds with curtains to give them
24 some privacy in between. So I don't -- a rough guess,
25 maybe 50 people per floor or more.

1 Q Okay. So 50 people all sleeping in one area?

2 A Yeah. So it would be -- the barracks was an open
3 barracks area, so the curtains were the only form of
4 privacy that they would be allowed.

5 Q Okay. Then there's just one bathroom right there;
6 correct?

7 A So there's a men -- a men's bathroom and a women's
8 bathroom.

9 Q Thank you, yes. I understand that you're trained in
10 forensic interviewing of children and those types of
11 cases. Was this case always going to be an FBI case even
12 though you're familiar with these types of issues?

13 A So the way that normally -- prior to this incident
14 if there was a sexual allegation, say a soldier sexually
15 assaults another soldier or somebody sexually assaulted a
16 child at their home at housing, it would go to CID.

17 Q And CID is what?

18 A Criminal Investigation Division for the Army. It's
19 basically -- so because of the Afghan guests being there,
20 it changed the whole dynamics of how everything operated.
21 It was kind of chaotic as far as who would take control
22 over certain dynamics. The FBI had lead. They were the
23 top of the chain. So they had priority if they wanted a
24 case or not. If they didn't want the case, then it would
25 go to CID. If CID didn't want the case, then it would go

1 to MPI. And then if MPI didn't want the case, then it
2 would go to the patrol officer.

3 Q And this case was always going to be an FBI case.

4 A So again, FBI has the primary first choice if they
5 wanted it or not, and so the FBI was called to see if
6 they were interested or wanted the case. They had stated
7 that they were interested and they were going to take it.
8 If they didn't take it, then the next step, according to
9 Army regulation, would go to CID. They have to
10 investigate it.

11 Q Okay. And like you said, in this case the FBI took
12 the case and that happened fairly quickly.

13 A Yes.

14 Q Okay. Now, I want to talk a little bit about when
15 you bring Mr. Noori to your patrol car. Is this a marked
16 patrol car?

17 A Yes.

18 Q You mentioned that you take his handcuffs off at
19 some point. When did you put them on?

20 A It was before he got into my patrol car.

21 Q And you seated him in the back of the car.

22 A Correct.

23 Q And there's a cage in between; right?

24 A Yes.

25 Q What was his demeanor at this point?

1 A Concerned. Confused.

2 Q And you mentioned that he speaks some English, but
3 you would agree he's not fluent in English.

4 A He speaks broken English, yes.

5 Q You wouldn't be able to have a complicated
6 conversation with him.

7 A I was able to talk to him just fine.

8 Q You mentioned that he kept asking you the same
9 question even though you answered his questions?

10 A Yes.

11 Q Okay. I want to talk about your specific role here.
12 So like I mentioned before, you're obviously trained to
13 handle these types of cases. You have a specific role
14 here and you brought Mr. Noori into custody; correct?

15 A Correct.

16 Q And so your job was just to bring him over to the
17 cell and to interview to get -- that paperwork form was
18 what you called it?

19 A So my job was to bring him back to the police
20 station to the interview room. The D cell came later.
21 But the form is called 850.

22 Q Thank you. And it's not your job to inform him of
23 what charges may be filed against him.

24 A So I informed him of what he was being brought in
25 for. What I did not do is read him his rights because I

1 was not going to ask him any questions, which I informed
2 him of that during the interview room area.

3 Q And when you informed him, you said, of what the
4 allegations were, I believe your words were you didn't
5 have an interpreter there; right?

6 A Not immediately, no.

7 Q Did you ever have an interpreter there when you
8 talked about what allegations would be against him?

9 A I'll be honest with you, ma'am, this happened a long
10 time ago. I know I asked for an interpreter to come
11 there. I don't remember 100 percent if one actually
12 showed up and we had a conversation about it or if, you
13 know, because he was able to speak broken English and
14 understand what we were saying to him, if -- you know,
15 because there weren't that many interpreters at the time,
16 so I don't remember how that whole process went.

17 Q So like you said, this was over a year ago.

18 A Correct.

19 Q And something that you did in this case was you
20 wrote a sworn statement.

21 A Yes, ma'am.

22 Q And the purpose of that sworn statement is to make
23 sure you put in enough information so you can recall it
24 later.

25 A Correct.

1 Q And enough information where if someone else is
2 reading it, they would understand what you did in this
3 case.

4 A Yes.

5 Q And there's no limit on what you can put in your
6 sworn statement; right?

7 A There is not, no.

8 Q Okay. I would like, in the same exhibit book in
9 front of you, I would like you to go to Exhibit 132,
10 which I believe is your sworn statement.

11 A Yep, I see it.

12 Q Perfect. Nice and quick. In this sworn statement,
13 you wrote about the investigation and a full synopsis of
14 what you did here; right?

15 A Yes, ma'am.

16 Q And on direct examination, you testified that --
17 I'll get the exact language here -- that Mr. Noori would
18 need to answer about some allegations; correct?

19 A I believe that's what I said, yes, ma'am.

20 Q And that conversation or anything about allegations
21 is nowhere in your report; correct?

22 A I don't recall. May I look?

23 Q Of course. Yes, take your time.

24 A The last paragraph of my investigative report is
25 where I talk about him needing to come with me for

1 questioning.

2 Q The paragraph starting with "I made contact with
3 Noori..."?

4 A That is correct.

5 Q Yes. And what sentence are you speaking to?

6 A It would be the very first sentence of that
7 paragraph.

8 Q "I made contact with Noori outside of Building 2529
9 and informed him that he needed to come with me to Fort
10 McCoy PD for questioning and that he should gather any
11 identification he has."

12 A Correct.

13 Q You agree that doesn't talk about allegations
14 against him?

15 A No, that's something that I would talk to him in
16 person and not necessarily write down the exact details
17 of what I would tell somebody.

18 Q And another item that you testified about on direct
19 was that there were allegations about him being sexual
20 with little boys and that's illegal in America, and
21 that's also nowhere in your report.

22 A That's correct.

23 Q And Mr. Noori responds "Well, that's not illegal in
24 Afghanistan"; correct?

25 A Correct.

1 Q And you would agree that a statement about the crime
2 that an allegation has been made about is incredibly
3 important in a criminal case.

4 A I could agree with, yes.

5 Q And that is nowhere in your report.

6 A It appears that I had failed to mention that in my
7 report, yes.

8 Q And you did not mention that in any report that you
9 made in this case at all; correct?

10 A That would be correct. Well, hold on a second.

11 Q All of the --

12 A Are you talking about the allegations that were
13 made? Is that what you're saying?

14 Q Any -- any conversation between you and Mr. Noori
15 where you spoke to him that he was alleged to have
16 touched small boys and he made comments about
17 allegations.

18 A No, I did not ask him any questions, therefore I
19 didn't write about it.

20 Q Are you aware if anyone from your department or any
21 other department went back to the barracks to interview
22 the small children before they were interviewed by the
23 FBI?

24 A They should not have been and I'm not aware of it,
25 no. I gave directions for that not to happen.

1 Q Yes. And I believe you testified that the FBI would
2 talk to Mr. Noori, you told us that?

3 A Yes, ma'am.

4 Q Okay. And what you wrote in your synopsis on the
5 same exhibit, Exhibit 132, is Noori was apprehended and
6 transported to the Fort McCoy police station until able
7 to be interviewed by the FBI. It's right under
8 "Synopsis"; is that correct?

9 A Yes, that is correct in the synopsis.

10 Q I'm sorry?

11 A In the synopsis, yes, that is correct.

12 Q I want to talk more about the statement that we
13 addressed just a couple questions before. Where were you
14 when you say that this conversation between you and
15 Mr. Noori happened where you said there are allegations
16 of a sexual nature, that you touch small boys, he says
17 that's not illegal in Afghanistan, and you say well, it's
18 illegal here. Is that -- does that capture the full
19 statement?

20 A He asked me why I was there. I told him that he was
21 there because of some allegations about some sexual
22 contact with some children, and then he made a comment it
23 not being illegal in Afghanistan. And I said "Well, it's
24 illegal here in America and I understand that it may be
25 legal in Afghanistan, but it's not legal in America."

1 Q And where are you during this statement?

2 A We were in the interview room, that I
3 aforementioned, to the east of the cellblocks.

4 Q Before he was taken to his cell.

5 A Correct.

6 Q And it's just you and Mr. Noori in that interview
7 room?

8 A Yes.

9 Q And again, you said he didn't have an interpreter;
10 correct?

11 A Correct.

12 Q At this point is he still handcuffed or is he
13 unhandcuffed?

14 A I unhandcuffed him when we got back to the police
15 kept.

16 Q Okay. And you had not advised him of his Miranda
17 warnings because, as you said, that wasn't your role in
18 this investigation.

19 A I didn't ask him any questions or questions related
20 to the crime, so no, I didn't read him his Miranda
21 rights, no.

22 Q Okay. How long were you two together in this room?

23 A Again, I don't -- I don't recall the exact time.
24 Over a half hour.

25 Q And what took a half hour? I understand you were

1 filling out that form with his name. What else takes
2 time?

3 A So I took over -- I went over the 850 form with him.
4 Then we also went over the 4137 form with him. So it's
5 the evidentiary -- or excuse me. If you were to collect
6 evidence or something in a safekeeping from somebody, you
7 would capture that data on, like what was taken from that
8 person, on a 4137. And then that form would then be used
9 to either keep it for safekeeping, if the person was in
10 custody, so they could be handed those items later after
11 they got out of custody. It's a custody -- it's --
12 what's the word I'm looking for. It's a chain-of-custody
13 sheet.

14 Q Is it --

15 THE COURT: Stop.

16 MS. BLAIR: Oh, I apologize.

17 BY MS. BLAIR:

18 Q If you flip in that exhibit book to Exhibit 131, so
19 immediately prior to where you are, is that the form that
20 you're speaking of?

21 A Yes, ma'am.

22 Q Okay. And so you did take custody of his
23 wristwatch; right?

24 A It looks like I did, yes.

25 Q And if he had anything else on him, you would have

1 marked that down.

2 A Everything that he had on him was marked down on
3 this form. It looks like it's not -- it doesn't have his
4 clothing on here, but I didn't take his clothes.

5 Q He still wore the same clothes he came in with?

6 A Correct.

7 Q And so during the 30 minutes you fill out this form,
8 you write down his information. What else did you do?

9 A We waited.

10 Q And you waited for what?

11 A We were waiting to see what the FBI was going to do
12 as far as if they were going to have somebody come in
13 that evening or if they were going to wait for the
14 forensic interview to get done, if that was going to
15 happen that day or the next day. It ended up happening
16 the next day that they were going to schedule it for, and
17 so I had to wait there until somebody either from the
18 mayor cell or an MP or somebody was able to relieve me so
19 that I could get back out and start taking calls again.

20 Q Back up just a little bit. I understand that you
21 didn't get Mr. Noori out of the barracks, it was someone
22 from the Army; is that right?

23 A Originally somebody from the military had found him
24 in the barracks for us and had -- I had met him and the
25 soldier at the front entrance to the barracks originally

1 when I made contact with them, yes.

2 Q Was Mr. Noori dressed as if he was about to go to
3 sleep?

4 A No.

5 Q Okay. Were you aware if he had eaten anything or
6 eaten dinner?

7 A So there was a -- the guests were on a -- there was,
8 like, a timeframe that they could go to and from the chow
9 halls. Each section or block section had different times
10 and chow halls that they had to go to. So if he had
11 personally gone there and eaten, I don't know. That was
12 his choice if he wanted to go there and eat or not.

13 Q You were unaware of that.

14 A Correct.

15 Q Thank you. I have no further questions for you.

16 THE COURT: Do you wish to redirect?

17 MS. KRAUS: I do.

18 **REDIRECT EXAMINATION**

19 BY MS. KRAUS:

20 Q I want to start with defense Exhibit 131, which I
21 believe you still have in front of.

22 A Yes, ma'am.

23 Q Now, you've testified that this is a form that's --
24 is this a form maintained by the Fort McCoy Police
25 Department?

1 A Yes, ma'am.

2 Q And just page through it. Is it a fair and accurate
3 copy?

4 A The 4137 is; correct. The 2708 is missing some
5 information.

6 Q Okay. Well, let's -- specifically let's just look
7 at the first page. It has the blue exhibit sticker on
8 it. And I believe at the bottom right hand it says
9 "Noori" and there's a series of numbers; is that right?

10 A Say that again, ma'am.

11 Q On the bottom right-hand corner there's --

12 A Oh, yes.

13 Q -- a series of numbers.

14 A That's correct.

15 Q So this page, just talking about this page, is this
16 page fair and accurate?

17 A The 172?

18 Q Just that single page, yes.

19 A Yes, ma'am.

20 Q Okay.

21 A And that is my signature in the chain-of-custody
22 block.

23 Q And this is something that the Fort McCoy Police
24 Department regularly fills out in investigations.

25 A Yes.

1 MS. KRAUS: I'm going to move for admittance of
2 that first page, Exhibit 131.

3 THE COURT: In your case?

4 MS. KRAUS: Yes. This is a defense exhibit.

5 MS. BLAIR: No objection.

6 THE COURT: Okay, it's in.

7 BY MS. KRAUS:

8 Q Okay. So you testified that everything Mr. Noori
9 had on him would have been on this paperwork you filled
10 out.

11 A With the exception of the clothes he had on his
12 person, yes.

13 Q Okay. And it's your testimony that you didn't
14 remove any of his clothing.

15 A I did not. That's why I didn't put it on here.

16 Q Okay. So if the fact -- if you would have taken his
17 shoes, for example, you would have put that on this form?

18 A Yes, ma'am.

19 Q Okay. And now, this lists any of the belongings
20 that were on his person at the time that you took him
21 from the barracks; is that a fair assessment?

22 A So I gave him the option to take whatever he needed,
23 because he had said that he needed to get stuff because
24 he didn't want anything stolen because there was people
25 that could steal his stuff. So I told him to grab

1 whatever he needed that he didn't want stolen, and these
2 are the items that he grabbed.

3 Q And turning to this list of items, a crayon isn't
4 listed on here.

5 A No.

6 Q Okay. Now, you did testify that after you filled
7 out this paperwork with Mr. Noori, you were waiting. You
8 were not a part of any of the decisions that were being
9 made while you were in that interview with him.

10 A No, ma'am.

11 Q Okay. So beyond filling out this paperwork with him
12 and waiting to see what was going to happen, those are
13 things that weren't your concern.

14 A That is correct, ma'am.

15 Q Okay.

16 MS. KRAUS: I don't have any further questions.

17 THE COURT: Very well.

18 MS. BLAIR: May I ask one brief clarifying
19 question, Your Honor?

20 THE COURT: You may ask one brief clarifying
21 question.

22 **RECROSS-EXAMINATION**

23 BY MS. BLAIR:

24 Q Officer, can you please flip back to defense Exhibit
25 132, onto the back side where you talk about your

1 conversation with Mr. Noori as he's about to leave and
2 you write that -- at the -- under "Investigation
3 continued," the second paragraph, informed him they need
4 to come to Fort McCoy PD for questioning and he should
5 gather any identification that he has; is that correct?

6 A Correct, that's what I wrote down.

7 MS. BLAIR: That's the only question I have,
8 Your Honor.

9 THE COURT: That's the only one I was going to
10 give you. Thank you, Sergeant. You're free to go about
11 your business.

12 THE WITNESS: Thank you, Your Honor.

13 MS. KRAUS: Your Honor, I just want to confirm
14 with defense that this officer is released from his
15 subpoena or if they would like him to stay.

16 MS. BLAIR: Yes, he may be released, Your Honor.

17 THE COURT: All right. You are free to go about
18 your business.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 THE COURT: All right. Do we need a break or
22 can we keep going with the next witness? We're good?
23 Okay. Let's keep going.

24 Mr. Bugni, while we're between witnesses, why don't
25 you put the pitcher close to our interpreter. I think

1 he's doing more talking than anyone.

2 MS. KRAUS: The government calls Edgar Bolivar.

3 THE COURT: Mr. Bolivar, please come up and
4 stand next to our clerk, who will administer the oath.

5 **EDGAR BOLIVAR, GOVERNMENT'S WITNESS, SWORN,**

6 THE COURT: Mr. Bolivar, please have a seat.

7 Let me just explain a couple of points. Under our COVID
8 protocols, you may keep your mask on if you wish, but you
9 do not have to as long as you are sitting there.
10 However, when you are actually speaking, if you choose to
11 keep your mask on, please lower it and speak into the
12 microphone so we make a good record.

13 Second, there is water to your left. Please feel
14 free to help yourself while you're testifying. Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Let's begin.

17 **DIRECT EXAMINATION**

18 BY MS. KRAUS:

19 Q Good morning.

20 A Good morning.

21 Q Could you please tell us your name.

22 A Edgar Bolivar.

23 Q Mr. Bolivar, would you mind scooting your chair a
24 bit forward.

25 A Sure.

1 Q Thank you. How are you currently informed or
2 employed? Excuse me.

3 A I'm employed by the DoD, ma'am.

4 Q What is the DoD?

5 A The Department of Defense.

6 Q What do you do for the Department of Defense?

7 A I'm in the U.S. Army.

8 Q And what kinds of things do you usually do in your
9 role with the military?

10 A I'm a mechanic.

11 Q And where do you usually work?

12 A Fort Bliss, Texas, ma'am.

13 Q Did you travel to Wisconsin from Texas just for the
14 hearing today?

15 A Yes, ma'am.

16 Q Thank you. I want to turn your attention to
17 September of 2021. At any point, did your work with the
18 military take you to Wisconsin?

19 A Yes, ma'am.

20 Q Where?

21 A Fort McCoy.

22 Q And what was the point of you going to Fort McCoy
23 with the military?

24 A We were involved in helping the guests, basically
25 just tend to their needs, anything they needed, we were

1 there for them.

2 Q Now you just used the word "guests." Who are you
3 talking about?

4 A The Afghani refugees that came from Afghanistan when
5 -- back in 2021 when they were all coming back.

6 Q How long or do you remember when you got to Fort
7 McCoy yourself?

8 A I got there back in -- I want to say August of 2021.

9 Q What kinds of things did you usually do at Fort
10 McCoy in order to support the Afghan refugees?

11 A We patrolled the blocks, and basically whenever the
12 guests came up to ask us for anything they needed,
13 accommodations or whatever, we would just tend to their
14 every need.

15 Q At any point when you were at Fort McCoy as part of
16 this, I'm going to say support mission, were you asked to
17 watch someone at a police station?

18 A Yes, ma'am.

19 Q Can you tell me a little bit about where you were
20 asked to do this.

21 A So it was on the actual Fort McCoy base. It was at
22 the MP station. I was watching the guest for two
23 individuals for two separate days.

24 Q Now you said MP. What do you mean?

25 A Military police station.

1 Q Where were you asked to watch these guests?

2 A At the cellblock.

3 Q So just so I'm understanding, you were asked to
4 watch over people who were in cells or something else?

5 A In the cells.

6 Q Okay. How many people were you asked --

7 THE INTERPRETER: I didn't get the word. Did
8 you say sales?

9 Q My recollection is cells. C-e-l-l-s.

10 THE COURT: As in jail cells.

11 MS. KRAUS: Jail cells.

12 THE INTERPRETER: All right. Thank you.

13 BY MS. KRAUS:

14 Q Now you said you were asked to watch over two
15 guests. Can you describe for me a little bit more what
16 exactly you were asked to do?

17 A So basically we would just sit in front of the
18 cellblock where the actual cells were and just every,
19 like, 30 minutes to an hour, just look over, look into
20 the window and make sure they were still okay.

21 Q Besides checking in on these people who were in the
22 cells, were you asked to do anything else?

23 A No, ma'am.

24 Q Okay. I want to start by showing you a couple of
25 pictures and I just want you to let me know if you

1 recognize them.

2 A Yes, ma'am.

3 Q I have government Exhibit No. 3 on the screen in
4 front of you. Can you tell me if you know what this
5 shows.

6 A Yes, ma'am. That's the cellblock that I was
7 watching.

8 Q Okay. Now, do you see anywhere in this photo where
9 you would have been watching or -- well, let me ask a
10 question first. When you were watching these people,
11 were you standing or sitting or something else?

12 A That chair right there, that's where I was sitting.

13 Q Okay. I'm going to turn to government Exhibit No. 4
14 here. Okay. What does this picture show?

15 A The cellblock where the individual was staying.

16 Q Is this a closeup picture of where you were asked to
17 sit?

18 A Yes, ma'am.

19 Q Okay. How long did you sit in that chair we see?

20 A For nine hours.

21 Q And did you do that for nine hours straight?

22 A Yes, ma'am.

23 Q Did you take a break after nine hours?

24 A Yes. After my shift, I got released for the rest of
25 the day. Because we had different dayshifts, so for my

1 shift, it was just those nine hours.

2 Q Did you come back at a different time?

3 A No, ma'am.

4 Q Okay. Now, I believe earlier you might have said
5 you were there for two days. Did I get that wrong?

6 A No, ma'am.

7 Q Okay. Can you explain a little bit more about what
8 you did or how much time you spent in this -- in this
9 cell area.

10 A So it was a two-day time period. It was nine hours
11 each day. And then -- yeah, that's basically it.

12 Q So if nine plus nine is 18, is it fair to say that
13 you spent 18 hours in this area watching?

14 A Yes, ma'am.

15 Q Okay. Did you spend all 18 hours in this chair or
16 did you move?

17 A I did move.

18 Q Where else did you go?

19 A Whenever I had to -- like if one of the police that
20 were there would come in, I would ask them for a break so
21 I could use the latrine or get water, stuff like that.

22 Q Okay. Is it fair to say that for both of your
23 shifts, though, that you were in this general area
24 keeping post?

25 A Yes, ma'am.

1 Q Now, do you remember how many people you were asked
2 to watch?

3 A Only two.

4 Q Okay. And were they both housed in cells?

5 A Yes, ma'am.

6 Q Were those cells next to each other?

7 A Yes, ma'am.

8 Q Okay. Do you remember being able to look into the
9 cell through the door?

10 A Yes, ma'am.

11 Q So turning to this picture again that's on the
12 screen, do you see a window where you might have looked
13 in?

14 A Yes, ma'am.

15 Q Okay. And so I see that there's a window on the
16 door.

17 A Yes, ma'am.

18 Q Is that where you were kind of checking in inside
19 the cells?

20 A Yes, ma'am.

21 Q Okay. Do you remember anything about the two people
22 you were asked to watch?

23 A So on the first day, it was an older individual, and
24 then the second day, it was a younger male.

25 Q I want to talk about the younger male. Do you

1 recall checking in on him during your shift?

2 A Yes, ma'am.

3 Q Okay. And how often did you check in on him?

4 A Every 30 minutes to an hour.

5 Q Do you remember seeing what he was doing inside the
6 cell when you checked in on him?

7 A He was just sleeping, ma'am.

8 Q Okay. You said that he was sleeping. Did he seem
9 to sleep most of the time you watched him?

10 A Yes, ma'am.

11 Q At any point did you see him sleeping -- or where
12 did you see him sleeping in the cell?

13 A Just on the cell bed.

14 Q Okay. Did you ever see him sleeping on the floor?

15 A No.

16 Q Did you ever observe him crying?

17 A No, ma'am.

18 Q Did you ever observe him hurting himself?

19 A No, ma'am.

20 Q Did you ever observe him looking really upset?

21 A No, ma'am.

22 Q Did you ever have an interaction with him in that
23 you actually spoke with him?

24 A No, ma'am.

25 Q At any point did he get your attention to speak with

1 you or someone else?

2 A No, ma'am.

3 Q If someone -- were you under instructions that if
4 someone did knock on the cell door from inside the cell
5 to go get a guard?

6 A Yes, ma'am.

7 Q Okay. So is it fair to say that if someone inside
8 the cell needed something, you would have alerted the
9 Fort McCoy Police Department.

10 A Yes, ma'am.

11 Q Did you see anyone interact with this younger man
12 while you were watching?

13 A No, ma'am.

14 Q Did you hear anyone make any threats to him?

15 A No, ma'am.

16 Q Did you see anyone use physical force while he was
17 inside the cell?

18 A No, ma'am.

19 Q At any point did you see anyone attempt to make this
20 man uncomfortable in any way?

21 A No, ma'am.

22 Q At any point did you see whether he was given food?

23 A Yes, ma'am.

24 Q Can you explain that for me.

25 A So every day around six in the morning they would

1 bring our breakfast chow, so whenever they would bring my
2 chow with his -- yeah.

3 Q Did you see the man eat?

4 A No, ma'am.

5 Q Okay. Did you see food being given to the man?

6 A When they brought the food for the specific day, I
7 had asked to go to the bathroom so I didn't see how they
8 give him the food or when they give him the food. I know
9 that the food was brought to him.

10 Q Was there anything that you observed of this man
11 during your shift that struck you as odd or concerning?

12 A No, Ma'am.

13 MS. KRAUS: I don't have any further questions.

14 THE COURT: Cross-exam.

15 MS. BLAIR: Yes, Your Honor. (10:24 a.m.)

16 **CROSS-EXAMINATION**

17 BY MS. BLAIR:

18 Q Good morning.

19 A Good morning.

20 Q So it's fair to say your involvement in this case
21 was watching Mr. Noori for approximately nine hours?

22 A Yes, ma'am.

23 Q It was nine hours on one day.

24 A Yes, ma'am.

25 Q And you had only watched someone in a cell during

1 these two days; is that fair?

2 A Yes, ma'am.

3 Q You've never done this before.

4 A Negative.

5 Q You're not specially trained to observe a prisoner

6 in a cell.

7 A Negative.

8 Q You're not trained in psychology.

9 A Negative.

10 Q Your job was to sit in the chair that we -- that we

11 looked at in the government's Exhibit 4 and check on this

12 individual every 30 minutes to a half hour.

13 A Yes, ma'am.

14 Q Now, you didn't author any reports in this case.

15 A Negative.

16 Q You didn't write anything; correct?

17 A Negative.

18 Q And do you speak any other languages beside English?

19 A Spanish.

20 Q Do you speak Pashto?

21 A Negative.

22 Q Do you speak Dari?

23 A Negative.

24 Q Now, you testified that almost the entire time you

25 were there you saw Mr. Noori sleeping.

1 A Yes, ma'am.

2 Q You're looking through the window in the door;
3 correct?

4 A Yes, ma'am.

5 Q You don't open the door.

6 A Negative.

7 Q The door is shut the entire time.

8 A Yes, ma'am.

9 Q So Mr. Noori is laying down, but you have no
10 personal interaction with him; correct?

11 A Negative.

12 Q Is that correct?

13 A Yes, ma'am.

14 Q Now your involvement, however, is recorded on an
15 incident detail report. I believe it could be called a
16 CAD?

17 A Yes, ma'am.

18 Q I would like you to look at that exhibit binder in
19 front of you --

20 A Yes.

21 Q -- and flip to Exhibit 152. And let me know when
22 you're there.

23 A Yes, ma'am, I'm here.

24 Q And do you call this a CAD or an incident report?
25 How would you classify it?

1 MS. KRAUS: I'm going to object to a lack of
2 foundation here. I don't believe that there's been any
3 foundation laid that this witness can identify this
4 document at all.

5 THE WITNESS: Yeah, I've never seen --

6 THE COURT: Hold that thought. But you can ask
7 him if he's ever seen it or had any input on it. If not,
8 then you have to explain to me why you are showing it to
9 him.

10 MS. BLAIR: Yes, Your Honor.

11 BY MS. BLAIR:

12 Q Have you seen anything like this before?

13 A Negative.

14 Q Okay. When you are watching a subject, do you log
15 in and make notes anywhere?

16 A Negative.

17 Q When someone else is watching a subject, do you know
18 if they log in and write notes anywhere?

19 A Negative.

20 Q You're unaware if someone would take notes on
21 whether a prisoner has touched his chow.

22 A Yes, ma'am.

23 Q And you're unaware if anyone said that you were
24 relieving a current prisoner.

25 MS. KRAUS: Objection. Asked and answered.

1 THE COURT: I'll let her ask. Do you want her
2 to repeat the question?

3 THE WITNESS: Yes, please.

4 THE COURT: Please.

5 BY MS. BLAIR:

6 Q You're not familiar with this at all.

7 A Negative.

8 Q So you started watching Mr. Noori right around
9 midnight; is that fair?

10 A Yes, ma'am.

11 Q And so then you were done around 9 a.m.

12 A Yes, ma'am.

13 Q And you said he was laying down that entire time.

14 A Yes, ma'am.

15 Q I want to talk about the specific observations that
16 you made of this cell. And I understand you were only
17 there for a total of eight hours, but this is a rather
18 small room.

19 A Yes, ma'am.

20 Q And there's a small cot with a plastic blue piece of
21 material?

22 A Yes, ma'am.

23 Q And as you stated, Mr. Noori had to stay in this
24 cell; right? He couldn't leave if he wanted to?

25 A Yes, ma'am.

1 Q And he wouldn't make a decision about when he would
2 eat?

3 A Yes, ma'am.

4 Q And you didn't see him with a prayer book or a
5 Quran?

6 A Negative.

7 Q Or a prayer rug?

8 A Negative.

9 Q He didn't have a watch on?

10 A Negative.

11 Q There's no TV or books inside the cell?

12 A Negative.

13 Q It was just Mr. Noori who, for your knowledge, was
14 there for nine hours entirely alone.

15 A Yes, ma'am.

16 Q And he could not communicate with anyone; correct?

17 A Yes, ma'am.

18 Q Now, it's rather chilly in this part of the -- in
19 this area; is that fair?

20 A Yes, ma'am.

21 Q What were you wearing?

22 A I was just wearing my uniform.

23 Q Is that long sleeved?

24 A Yes, ma'am. Well, not long sleeve, but it's an over
25 jacket, like a regular U.S. Army uniform.

1 Q You had the over jacket on?

2 A Negative.

3 Q I'm sorry, can you explain to me?

4 A So it's just basically a basic uniform: regular
5 t-shirt, my uniform, pants, boots.

6 Q And the uniform, is it a button-up shirt?

7 A Zip up.

8 Q Zip up and it's long sleeved.

9 A Yes.

10 Q Okay. And it was a little chilly in there; right?

11 A I wouldn't remember.

12 Q You kept on the overshirt?

13 A Well, I mean I have to. It's the uniform.

14 Q Okay.

15 THE INTERPRETER: What was the answer? I'm
16 sorry, I couldn't hear it.

17 MS. BLAIR: He has to.

18 THE COURT: Because it's his uniform.

19 BY MS. BLAIR:

20 Q I want to go back to what your particular
21 responsibilities are here, okay?

22 A Yes, ma'am.

23 Q All right. Your job is to ensure his general
24 well-being; right?

25 A Yes, ma'am.

1 Q Your job isn't to inform him of any charges.

2 A Negative.

3 Q Your job isn't to make sure he gets to court on
4 time.

5 A Negative.

6 Q Your job isn't to make sure the FBI interviews him
7 within a reasonable period of time.

8 A Negative.

9 MS. KRAUS: Objection.

10 THE COURT: Move on.

11 MS. BLAIR: Yes, Your Honor. I have no further
12 questions. Thank you very much.

13 THE WITNESS: Yes, ma'am. Thank you.

14 THE COURT: Any redirect?

15 MS. KRAUS: Briefly.

16 **REDIRECT EXAMINATION**

17 BY MS. KRAUS:

18 Q I want to clarify something that the other attorney
19 just asked you.

20 A Yes, ma'am.

21 Q She asked you whether Mr. Noori, the person you were
22 watching, whether he could not communicate with anyone.
23 Is it fair to say that he could have knocked on the
24 window if he needed someone?

25 A Yes, ma'am.

1 Q Did he or any other of the people you watched knock
2 on the window and ask for anything?

3 A Negative.

4 Q Okay.

5 MS. KRAUS: I don't have any further questions.

6 THE COURT: All right. Thank you. Now you are
7 done. You are free to go about your business.

8 MS. KRAUS: And Your Honor, just to confirm
9 whether defense would like Mr. Bolivar to stay or if he
10 can be released.

11 MS. BLAIR: He does not need to stay.

12 THE COURT: Let's make this the book of the
13 month club negative option. Unless the defense actually
14 says I want the witness to stay, we will assume that when
15 the person -- the witness is excused from testifying, he
16 or she is free to go about his or her business, okay?
17 That's our rule going forward. You are free to go.

18 THE WITNESS: Thank you, Your Honor. Have a
19 good day.

20 THE COURT: Thank you. Safe travels home.

21 (Witness excused.)

22 THE COURT: Do we need a break or can we keep
23 going?

24 THE INTERPRETER: I think we're fine.

25 THE COURT: We will keep going. Please call

1 your next witness.

2 MS. KRAUS: The government calls Lieutenant
3 Christopher Henke.

4 THE COURT: And just for planning purposes,
5 about how long do you think your direct will be?

6 MS. KRAUS: Of Lieutenant Henke, I'm going to
7 approximate a half an hour. I have no concept of what
8 time we've been going, so...

9 THE COURT: We will definitely take a break
10 after this witness's testimony.

11 MS. KRAUS: Okay. Thank you.

12 THE COURT: Lieutenant, I'm going to need you to
13 stand and raise your right hand as you take the oath,
14 please.

15 **CHRISTOPHER HENKE, GOVERNMENT'S WITNESS, SWORN,**

16 THE COURT: All right. Lieutenant, please have
17 a seat. Let's talk about COVID protocols. You are free
18 to keep your mask on if you choose to. While you're
19 testifying, however, you may take your mask off. It's
20 your choice. If you're taking it off, I don't have to
21 tell you part B.

22 THE WITNESS: All right, Your Honor.

23 THE COURT: There is water to your left if you
24 would like it. Help yourself. With that, let's begin
25 the questioning.

CHRISTOPHER HENKE - DIRECT

1 MS. KRAUS: Thank you.

2 **DIRECT EXAMINATION**

3 BY MS. KRAUS:

4 Q Could you please state your name.

5 A Christopher Henke.

6 Q How are you employed, Mr. Henke?

7 A I'm employed with the Fort McCoy Police Department.

8 I'm a lieutenant and one of the shift watch commanders.

9 Q How long have you been working for the Fort McCoy

10 Police Department?

11 A Since approximately 2003.

12 Q What do you typically do for the police department?

13 A I'm a shift supervisor, so I'm responsible for the

14 supervision of the officers assigned to dayshift,

15 administrative tasks, case review, and then protocols

16 around the station.

17 Q Generally how would you describe the call volume

18 that the Fort McCoy Police Department receives?

19 A It's seasonal. It depends on the flux of soldiers

20 there for training and so forth. Generally our April to

21 October training season is the peak. Typically outside

22 of that training season, our call volume is not real

23 high.

24 Q Under normal operations, what kind of shift do you

25 work?

CHRISTOPHER HENKE - DIRECT

1 A Generally I'm on a 12-hour shift, 05 in the morning
2 until 1700 in the afternoon.

3 Q I want to talk about late August, early September of
4 2021. Is it fair to say that during that time the Fort
5 McCoy Police Department was operating kind of outside of
6 maybe its normal volume or kind of normal course of
7 business?

8 A That would be a fair assessment, yes.

9 Q Could you expand on that for me.

10 A To do the mission that we picked up, the OEW
11 [verbatim] mission, we had a large influx of personnel in
12 a very short span of time, in addition to some of the
13 normal things that were going on there. Obviously due to
14 the nature of the mission, there was a lot of additional
15 challenges, I guess, with language and the development of
16 the policies, procedures, and so forth that we were going
17 to do moving forward with that influx of population.

18 Q How did your day-to-day work change, if any?

19 A It changed quite immensely because we worked through
20 a much more convoluted chain of command, I guess. We
21 still had the same obligations, duties, but we had
22 additional calls for service. We had additional
23 responsibilities to interact with various points of
24 contact and liaison with these mayor cells and the
25 footprint over there, in addition to our normal

1 workforce.

2 Q I want to turn your attention to September 12 of
3 2022. Do you recall if you were working on that day?

4 A I do not off the top of my head. I'm sure it would
5 be in the CAD.

6 Q Sure. For context during this time, do you recall
7 what hours your normal shift was or the shift you were
8 expected to work?

9 A Yes. I would work Sunday through Tuesday every
10 week, I had every other Wednesday off, and as I say
11 before, 05 to 1700 was my daily shift. There's a little
12 bit of overlap before or after those hours for shift
13 change with the oncoming and offgoing shift supervisors.

14 Q You said your shift generally was 05 to 1700 hours?

15 A Correct.

16 Q Would that mean 5 a.m. to about 5 p.m.?

17 A Yes.

18 Q Okay. Now, before I jump, I guess, to whether you
19 were working September 12, at this point in time -- at
20 any point in time were you made aware of a possible
21 sexual assault allegation that Fort McCoy was assisting
22 with?

23 A Yes.

24 Q Do you recall about the time of day that you were
25 made aware of this investigation?

1 A It would have been when I came in to work prior to
2 that 5 a.m. Usually anywhere between 15 and 30 minutes
3 prior to shift is where the oncoming supervisor will come
4 in, link up with the current supervisor on duty, and we
5 do a changeover briefing.

6 Q Okay. Now I'm going to show you what's been marked
7 -- excuse me. One moment, please. I'm going to show you
8 what's been marked as government Exhibit No. 1. Do you
9 recognize what this is?

10 A Yes. It's just one of our standard CAD call logs.

11 Q Okay. So you just used the word CAD. Can you
12 explain to me what that is?

13 A It's just an acronym for computer-aided dispatch,
14 and it's just what our dispatchers at our call center,
15 what some people may refer to as a 911 call center or
16 whatever. It also sends out to patrols. Every time we
17 have a call for service or an incident that occurs, they
18 start a CAD sheet and log all pertinent activity.

19 Q Taking a look at this specific CAD, that same
20 government Exhibit No. 1, is this the CAD related to that
21 sexual assault I asked about earlier?

22 A Yes, I believe so.

23 Q And so if you would have been involved in this
24 investigation or at least in any kind of assistance, at
25 some point your involvement would have been logged in

1 this CAD?

2 A Yes.

3 Q Okay. And when someone logs maybe something that
4 they did or their activity, is there a name listed or
5 something else?

6 A Something -- it may vary. Sometimes there may be
7 both, sometimes it may be one. Generally it's going to
8 be a call sign. So you'll see 106. I know 100 series is
9 a supervisor. I don't off the top of my head know which
10 one it would be. I know I'm 101.

11 Q Okay. So, for instance, then turning to page two of
12 this CAD, and I'm going down to about halfway down the --
13 a third -- about a third down this page, turn your
14 attention to a line that says 9-12-2021, 7, I believe
15 72825 and then I see there is 101 appears. What's that
16 in reference to?

17 A That is my call sign, 101 being the dayshift watch
18 commander supervisor, and that is a check of our guest in
19 the detention cell, all in order. So it was just
20 basically a welfare check that I conducted at that time
21 based on the shift change briefing and the information
22 that we were -- had somebody in one of our detention
23 cells.

24 Q So kind of going back to the question I asked
25 earlier which was whether you were working on September

1 12, is it fair to say that you were?

2 A Yes.

3 Q And so at what point in time do you recall that you
4 were made aware of this investigation and asked to
5 assist?

6 A It would have been at the shift briefing, probably
7 between 0445 and 0500 that morning. So 4:45 to 5 a.m.

8 Q So prior to that time that you started on the
9 morning of September 12, did you have any involvement at
10 all in this investigation or -- at all?

11 A No.

12 Q Okay. When you arrived to work on September 12,
13 what were you assigned to do in connection to this
14 investigation?

15 A I wasn't made any assignment specific to the
16 investigation whatsoever. As a dayshift supervisor, me
17 taking control, I'm responsible for anybody that we're
18 holding in a detention cell. So my duties related to
19 that would be simply taking care of welfare, food, and
20 all those other things for the individual we had in the
21 detention cell and making sure that those got logged.
22 You know, my welfare checks. So that was my -- the
23 extent of my duty.

24 Q Now, you referenced again, you know, you're
25 responsible for checking in on someone inside of a cell.

1 What cell is involved as it relates to this particular
2 CAD or your assignment?

3 A You're asking a specific cell number?

4 Q Do you recall.

5 A I know that it was -- we walk into our detention
6 cell from the police-enter hallway, you have a processing
7 room, a first cell and a second cell. It would have been
8 the second cell.

9 Q Okay. And so if it's helpful, let's take a look at
10 the top of this screen here. Turning your attention to
11 about the third line down.

12 A Yep.

13 Q 9-11-2021, there's a call cell and it says in cell
14 119B.

15 A Yep. And Bravo would be second cell. First one
16 would be Alpha cell.

17 Q So based on what you remember from this, you were
18 checking in on someone who was detained in cell 119B.

19 A Correct.

20 Q Okay. Now, what was the point -- I see that here
21 your call sign pops up a few times.

22 A Yes.

23 Q Really what is the point of continuing to log
24 activity on this CAD?

25 A The logging of the activity is ensuring that the

1 individual that's being held is in good health. They're
2 not in distress. It's just a health-and-welfare check
3 that we're required to do. Even though we have live
4 camera and audio feed that goes to dispatch, they
5 obviously have other duties as kind of an ancillary duty.
6 So it's just a series of safeguards and checks that we do
7 to ensure that everybody that we put in a detention cell
8 is fine.

9 Q Okay. Now, if something happened and you didn't log
10 it, I mean is that typical that you are not logging every
11 single interaction verbatim from this CAD?

12 A That's probably a fair assessment. Due to --
13 particularly due to the call volume, I'm sure the
14 dispatchers at times may not get an entry in right away
15 if they're dealing with another emergent call for
16 service. At that time the call volume was pretty high,
17 so we had a lot of ambulance runs and various 911 calls
18 that we were responding to.

19 Q For clarification, are you entering in your activity
20 or does someone else?

21 A It would be one of our dispatchers. All I do is
22 make a call on the radio to let them know that I did a
23 check or patrolman calls in and out to a call. They do
24 the actual data entry.

25 Q Okay. So you're not responsible for the exact words

1 that are put into this CAD.

2 A No.

3 Q Okay. I want to turn to what interactions you might
4 have had on September 12 with one of the individuals you
5 were watching specifically in cell 119B. Turning to your
6 CAD here, it looks like your first check was about 7:30
7 in the morning; is that fair?

8 A Yes.

9 Q And at that time, do you recall anything about your
10 interaction or observation of this person?

11 A I don't specifically recall if I had any interaction
12 or conversation at that time. That's not the purpose of
13 me checking in. It's popping my head in the window,
14 making sure that the individual is either up, moving
15 around. You see that they're still there and in good
16 health.

17 Q And do you recall making any specific observations
18 of this person in the morning when you got there? What
19 did they look like? What were they doing?

20 A I don't know specifically if it was that very first
21 check, but the individual most of the time was sleeping.
22 At some point, he would be wrapped up in the blanket on
23 the cot, other times he'd be wrapped up in a blanket on
24 the floor of the cell.

25 Q Now, I want to talk a bit about -- you said

1 blankets.

2 A Correct.

3 Q Is it standard issue -- is it standard issue to have
4 blankets in these cells?

5 A Yes. Each cell is equipped with a blanket as part
6 of the equipment that's in there and it's essentially a
7 hard structured bed that's attached to the floor so they
8 can't move it and so forth with a -- kind of a vinyl
9 colored mattress and a blanket.

10 Q Now I want to turn to Exhibit 5 that's on the screen
11 here.

12 A Yes.

13 Q What is that?

14 A That is a blanket that we would issue in the D cell.

15 Q So that's the kind of blanket that comes with every
16 cell.

17 A Either that or the lighter green-colored blanket.

18 Q Okay. And do you recall whether the person in 119B
19 had this green blanket?

20 A I believe they had the light green one. I believe
21 the wool blanket would have been the second blanket that
22 was given to the individual in that detention cell.

23 Q So turning to Exhibit 6, what's this?

24 A That is the more common blanket that we keep in the
25 D cells.

1 Q Okay. Do you recall whether the person in 119B had
2 this blanket?

3 A Yes, that's the blanket they would have had.

4 Q I see you've got a bag next to you.

5 A Yes.

6 Q Do you have that blanket with you?

7 A Maybe not that specific blanket, but -- they get
8 laundered when we rotate people through, but it is the
9 exact same issued blanket.

10 Q Would you mind pulling it out for me?

11 A Okay.

12 Q And can you describe it for us.

13 A I would describe it as a typical, if you stay at any
14 lower-priced motel or hotel. Other than color, it's a
15 typical blanket that you'd have on one of those
16 motel/hotel beds.

17 Q Okay. Is it soft?

18 A It is soft.

19 Q Okay. And about what weight is it?

20 A I don't know. I mean they're, like I said, standard
21 hotel blanket, I guess is the best way.

22 Q Okay. And you recall seeing the person in 119B with
23 this blanket.

24 A Correct.

25 Q And at any point, did the person ask for a second

1 blanket?

2 A Yes.

3 Q And do you recall at about what time this happened?

4 A I do not. I'm sure it may have been in the CAD when
5 we provided. If it's not, I just know that at one point
6 in one of my welfare checks, the individual indicated
7 they were cold and we got them an additional blanket.

8 Q I want to turn to -- oops, let me find it. Exhibit
9 No. 1 here again. Okay. Turning back to Exhibit No. 1,
10 I'm going to scroll down here and I'm going to zoom this
11 up a little bit. Do you see where it's marked, this
12 reference to the second blanket?

13 A Correct, I do see. Yep.

14 Q And about what time do you indicate that you're
15 trying to get some additional blankets?

16 A It says there 15:39, which would be 3:39 p.m.

17 Q What exactly does that line say?

18 A It says "meal passed on to detainee along with an
19 extra blanket."

20 Q Okay. So then going to Exhibit 5, is that that
21 extra blanket?

22 A Correct.

23 Q And do you have that blanket with you?

24 A Yep, it is also in the bag here.

25 Q Do you mind pulling that one out. How would you

1 describe that blanket?

2 A That is an Army-issued wool blanket.

3 Q So in response to this person asking or expressing
4 that they're cold, you arranged for a second blanket to
5 be brought to this person.

6 A Correct.

7 Q Now, I want to turn to some of your other
8 observations of this person in 119B. Do you recall --

9 THE COURT: Can I interrupt? Are the blankets
10 going to be offered as exhibits?

11 MS. KRAUS: I'm offering as demonstratives, 5A
12 and 6A. The photos were admitted into evidence and I
13 just am offering those for a visual aid. I don't want to
14 enter them in evidence in that I don't want the court
15 clerk to be responsible for physical blankets.

16 THE COURT: We've handled bigger stranger things
17 than that.

18 MS. KRAUS: Well, then at this point I'll move
19 them into evidence.

20 THE COURT: All right. Any objections?

21 MS. BLAIR: No, Your Honor.

22 THE COURT: We will keep the blankets.

23 BY MS. KRAUS:

24 Q All right. So I want to then move on to some other
25 observations of this person. About what length of time

1 were you responsible for checking in on them?

2 A Well, it would have been from the time that I came
3 in for duty that morning at about 5 a.m., and I would
4 have handed those duties off to the next supervisor, my
5 relieving supervisor, at about 5 p.m. that same day.

6 Q Okay. So that's about 12 hours.

7 A Correct.

8 Q Do you recall if you were assigned to watch or check
9 in on that person the following day, September 13th?

10 A I believe so. The next day, up until the time that
11 he was pulled to speak with people, I would have had the
12 same duties.

13 Q Now during this time, about how often did you check
14 in on him?

15 A I tried to do an hourly check. Obviously that
16 didn't always happen. I think it's important to note
17 that that room is under video surveillance, and we also
18 had a posted monitor in the hallway to the D cells. It's
19 just kind of an extra precaution because it was the first
20 time we were dealing with the mission that we were
21 dealing with and we didn't want anything bad to happen.

22 Q At any point when you checked in on this person, did
23 they communicate with you?

24 A Occasionally, yes.

25 Q Can you describe some of those interactions?

1 A The interactions, it was difficult because of a
2 little bit of a language barrier. But generally wanted
3 to know why they were there; that he wanted to be
4 released, and I kept explaining to the individual that I
5 wasn't in control of that timeline. We would continue to
6 get him food, meal time -- meals at mealtime, and that we
7 would get to him as soon as able.

8 Q Did you provide this person food?

9 A Yes.

10 Q And do you know if the person ate?

11 A From my observation, very little, if any, of the
12 food was touched that we dropped off.

13 Q Where did you get this food from?

14 A The food came from the same dining facilities that
15 were contracted to provide food for the rest of the OEW
16 [verbatim] mission.

17 Q So essentially you were giving this person the same
18 food that had been offered for any amount of time that
19 they were staying on base.

20 A Correct.

21 Q Okay. Now, you have the ability to control the
22 temperature of individual cells?

23 A No.

24 Q And can you explain that?

25 A Our complete building, not only not the cells but I

1 have an office, for instance, I have no control --
2 there's no separate thermostats in that building. It's
3 all controlled by the installation. And they have
4 prescribed times that they turn air conditioning off,
5 turn heat on, and what temperature it's at we have no
6 control over that.

7 Q Do you have any recollection of what the person in
8 119B was wearing when you observed them?

9 A Some sort of long pants, possibly sweat pants, but
10 something similar, sandals, and I believe a t-shirt.

11 Q Did this person have shoes?

12 A Yes.

13 Q Okay. At any point did -- now you described the
14 person appeared to be sleeping for most of the time; is
15 that fair?

16 A Yes.

17 Q And how -- what led you to believe this person was
18 sleeping?

19 A They were just lying down, like I said, either on
20 the cot or on the floor.

21 Q At any point did you observe this person to be
22 crying?

23 A Not in my observation, no.

24 Q At any point did the person appear hysterical?

25 A No.

1 Q At any point did you have any concerns that this
2 person was inordinately upset or in distress?

3 A No.

4 Q At any point did this person ask you directions as
5 in north, south, east, west?

6 A No.

7 Q At any point did this person ask for religious
8 accommodations?

9 A No.

10 Q At any point did you use physical force on this
11 individual?

12 A No. As a matter of fact, I never entered the cell.

13 Q Did you ever deprive him intentionally of sleep?

14 A No.

15 Q Did you ever intentionally deprive him of food or
16 water?

17 A No.

18 Q Did you intentionally make the cell colder?

19 A No.

20 Q At any point did you observe anything that caused
21 you alarm in your observations of this individual?

22 A No.

23 Q I want to turn to -- just a few last questions here,
24 Lieutenant Henke. I want to turn to government Exhibit
25 4. What am I looking at here?

1 A That is the hallway where the detention cells are
2 located. They're all on the right-hand side from that
3 view and that is the inside the cell door in the propped
4 open position.

5 Q And is this cell 119B?

6 A Correct.

7 Q The specific cell you were asked to essentially keep
8 watch over.

9 A Yes.

10 Q And is there a window in this door?

11 A Yes, that is a see-through -- I mean it's not one
12 way or anything. I can see in and the individual can see
13 out that window.

14 Q And when you communicated with this individual, did
15 you communicate with them at that window?

16 A Yes.

17 Q I see there's a chair in this hallway.

18 A Yes.

19 Q Was anyone seated there when you did your checks?

20 A That was where we had what we would refer to as
21 borrowed military manpower. So we had units that were
22 assisting with the care of everyone during mission and we
23 had somebody stationed in that chair. Short of restroom
24 breaks, they were there 24-7.

25 Q And this person, to be clear, is not a police

1 officer or law enforcement member.

2 A No.

3 Q Turning to Exhibit No. 7, can you tell me what that
4 is?

5 A That's the outside view of the window, from the
6 looks of it.

7 Q And so was this photo, does it look like it was
8 taken inside the cell?

9 A Oh, I see -- yeah, I see the chair from inside the
10 cell; correct.

11 Q So if someone were standing in the cell, they could
12 -- this is what they would see upon looking out.

13 A Correct.

14 Q Okay. The final picture I wanted to show you was
15 government Exhibit 8. And for clarity, the last exhibit
16 I showed you was Exhibit No. 7. What is Exhibit 8?

17 A That's just a view of the cell.

18 Q This is an interior shot of 119B.

19 A Correct.

20 Q Okay. And I want to show you -- I want to show you
21 a photo from Docket 43, which is the defense motion. I
22 want to show you a photo here. Is this the -- is this
23 cell 119B?

24 A No. The cell he would have been in, the cot would
25 have been on the right side.

1 Q So going back to Exhibit No. 8, that is 119B.

2 A Correct.

3 Q Okay. This photo that's included in Docket 43, that
4 is not the cell where the individual was being held.

5 A No, no. The cot was on the right. Yeah, that's it.

6 Q Okay. My last line of questioning here, Lieutenant
7 Henke, has to do with whether you observed the FBI
8 interact with the person who is being held in 119B. Did
9 you?

10 A My only observance of that is once Mr. Noori had
11 been removed from the detention cell and taken to one of
12 our interview rooms, I did periodically check in --
13 there's an observation room that has the one-way glass.
14 It's located in between the two interview rooms. I went
15 into that several times to make sure everything was going
16 all right with the interview. That's also common
17 protocol any time we're doing an interview, to make sure
18 that whoever is being interviewed is in good health and
19 that they haven't also done anything to law enforcement
20 personnel in there.

21 Q And did you observe any instances of physical force
22 being used against Mr. Noori?

23 A No.

24 Q Did you observe any threats between Mr. Noori and
25 any of the FBI investigators?

1 A Absolutely not.

2 Q And did you interact with either Mr. Noori or the
3 FBI following the interview?

4 A Very briefly. My interaction was solely to assist
5 the FBI in taking him back to the detention cell so that
6 he could utilize the latrine facilities there before the
7 departure and subsequent ride back to Madison.

8 Q And during that interaction did you use any force on
9 him?

10 A No force was used. Obviously we had to put our
11 hands on him to take the hand irons off, so he was placed
12 against the wall, they were removed so he could use the
13 restroom facilities, and he was placed back in the
14 handcuffs.

15 Q In sum, did you observe anything either of this
16 person, Mr. Noori, or done to this person that -- during
17 your entire observation of him over the course of these
18 two days that gave you any concern or pause?

19 A No.

20 MS. KRAUS: I have no further questions.

21 THE COURT: Cross-exam. (10:59 a.m.)

22 MS. BLAIR: Yes, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MS. BLAIR:

25 Q Good morning, Lieutenant.

1 A Good morning.

2 Q I want to begin by clarifying your role in this
3 investigation. Your role is to ensure the general well
4 being of Mr. Noori while he's in the facility; is that
5 fair?

6 A Yes.

7 Q You don't investigate the case at all, you're just
8 there to make sure he's okay generally.

9 A Me in a general sense or me specifically?

10 Q You specifically in this case did not investigate
11 this case.

12 A Correct.

13 Q Now, you're familiar obviously with the standard
14 operating procedures for the detention cells and holding
15 area operations.

16 A Correct.

17 Q And one of those procedures is that a civilian may
18 not be held more than 12 hours in your custody; is that
19 fair?

20 A In normal circumstances; correct.

21 Q Until the FBI had taken over, they were just using
22 your facility to hold him; correct?

23 A Correct.

24 Q Okay. Now, you had mentioned that there's a live
25 feed going on inside this cell. Is that what you

1 testified to?

2 A There is surveillance of that detention cell;
3 correct.

4 Q From the inside of the cell?

5 A Yes.

6 Q Is it just a live feed or does it record in any way?

7 A It's recorded, I believe, but I think there is a
8 very short window that it stores any of that.

9 Q How short is that window?

10 A I do not know. You'd have to talk to dispatch and
11 find out. That's all their technology and they're the
12 ones that run those recording systems. There's very few
13 people that have access to that.

14 Q As far as you're aware, has anyone asked you or
15 anyone else that you've heard of to preserve the
16 recording of Mr. Noori in his cell?

17 A Not that I'm aware of. That wouldn't be something
18 anyone would ask me, because like I said, that's not one
19 of my duties. I'm not privy to access to that.

20 Q Do you know exactly how cold it is in the holding
21 cell area?

22 A It would be the same temperature as the rest of the
23 building.

24 Q Do you know what that is?

25 A I have no idea. I suspect --

1 Q Just one moment. I apologize.

2 THE COURT: I'm sorry, I'm not keeping track
3 either. (pause at 11:01 a.m.)

4 A Whatever the government sets it on is the mandated
5 -- I mean, I'm sure it's like this building. It's a set
6 parameter and I don't ever look at the temperature in
7 there so I wouldn't know. But same as the rest of the
8 building.

9 Q At some point a clock is set outside Mr. Noori's
10 cell?

11 A Yes, I believe we did put something out there for
12 him.

13 Q Okay. And something to tell time.

14 A Correct.

15 MS. BLAIR: I have no further questions. Thank
16 you, Lieutenant.

17 THE COURT: Redirect?

18 MS. KRAUS: No. Thank you.

19 THE COURT: All right. Thank you, Lieutenant.
20 You're done. You're free to go about your business.

21 THE WITNESS: And do I just leave these here?

22 THE COURT: Yes.

23 THE WITNESS: All right.

24 (Witness excused at 11:02 a.m.)

25 THE COURT: All right. Before you call for your

1 next witness, let's talk about how we want to handle
2 this. Do you want to take a 5- to 10-minute break and
3 come back and do more witnesses? Do you want to take an
4 early lunch hour of 30 to 45 minutes and then finish the
5 last two witnesses? I will do whatever you want to do.

6 MS. KRAUS: Your Honor, my preference would be
7 to perhaps take the early lunch now so I can get the
8 second -- the last two witnesses ready to go, and then
9 after the lunch break, we'll be able to just move
10 seamlessly through.

11 THE COURT: How long a lunch break would you be
12 requesting?

13 MS. KRAUS: Half hour is fine.

14 THE COURT: That's enough time?

15 MS. KRAUS: That's fine.

16 THE COURT: Okay. Ms. Blair, Mr. Bugni, how
17 does that sound to you?

18 MR. BUGNI: All right.

19 MS. BLAIR: That sounds good.

20 THE COURT: Okay. So it's a little after 11.
21 Let's break for an early lunch. Let's reconvene at 11:40
22 to finish the government's witnesses, and then pursuant
23 to our previous understanding, Ms. Blair, the defense
24 witnesses will be called tomorrow.

25 MS. BLAIR: Your Honor, if -- so absolutely as

1 to Dr. White and then to the judge from Afghanistan.
2 However, if Your Honor would prefer to use all of our
3 time today, we would be prepared to call Mr. Noori today.
4 Whatever is the best use of the court's time.

5 THE COURT: I am free all day. I am available
6 if it works for the interpreters and for the attorneys.
7 If Ms. Kraus is ready to cross-examine today, we will do
8 that. If she was planning on tomorrow, I will not make
9 her go today. Ms. Kraus.

10 MS. KRAUS: Your Honor, my impression was that
11 we were going to be calling defense witnesses tomorrow.
12 I certainly could prepare a cross, but also I should add
13 that Ms. Blair did represent to me that it was unlikely
14 they were going to call Mr. Noori, so I'm unprepared --

15 THE COURT: No, I've heard enough. Then we'll
16 stick with the previous arrangement. I won't make the
17 government cross-examine Mr. Noori today if he were to
18 choose to take the stand. If you add any other witnesses
19 today, we could probably do those, otherwise then we'll
20 finish the hearing today when the government calls its
21 last witness. We'll continue tomorrow with all the
22 defense witnesses at that time.

23 I just used three of your minutes of lunch hour.
24 Let's reconvene at 11:45.

25 (Lunch recess 11:04-11:51 a.m.)

1 THE CLERK: All rise. This Honorable Court is
2 again in session. Please be seated and come to order.

3 THE COURT: All right. Welcome back everybody.
4 Just for the record, let me remind both our interpreters
5 that you remain under oath.

6 Any preliminary matters before the government calls
7 its next witness? Are we good? Please call your next
8 witness.

9 MS. KRAUS: The government calls Matthew
10 O'Neill-Levine.

11 **MATTHEW O'NEILL-LEVINE, GOVERNMENT'S WITNESS, SWORN**

12 THE COURT: Please be seated. Let me just give
13 you two frontal advisals. One about our COVID protocols.
14 If you wish to keep your mask on, you may. You don't
15 have to. Because you're taking it off, part B is
16 irrelevant.

17 THE WITNESS: Okay.

18 THE COURT: Also there is water to your left, if
19 you wish.

20 THE WITNESS: Thank you, sir.

21 THE COURT: With that, let's begin.

22 MS. KRAUS: Thank you.

23 **DIRECT EXAMINATION**

24 BY MS. KRAUS:

25 Q Can you please state your name.

1 A Matthew D. O'Neill-Levine.

2 Q What do you do for a living, Mr. O'Neill Lavigne?

3 A I am a supervisory federal agent with the TSA Law
4 Enforcement/Federal Air Marshal Service. My official
5 title is Assistant Federal Security Director for law
6 enforcement.

7 Q Generally how long have you been with the TSA?

8 A Almost 21 years.

9 Q And as part of your employment with the TSA, at any
10 point were you asked to assist at Fort McCoy?

11 A Yes.

12 Q In what capacity?

13 A Initially I was deployed to Fort McCoy as the Law
14 Enforcement Group Supervisor for the Department of
15 Homeland Security, and then later I was Acting Deputy
16 Federal Coordinator.

17 Q At what time were you assigned in this role with
18 respect to Fort McCoy?

19 A It began in September, early September 2021. My
20 first tour went through until Thanksgiving, around that
21 time, and then my second tour began in January and ended
22 towards the end of February 2022.

23 Q What led you to essentially this assignment at Fort
24 McCoy?

25 A So I had previously deployed, for instance, for a

1 refugee crisis out of Lebanon previously and disaster
2 recovery to hurricane-affected disaster zones in the past
3 in a leadership role in law enforcement. When they were
4 looking for volunteers to assist with Afghanistan
5 evacuees, I volunteered. I initially thought I was going
6 to be deployed internationally, but they said that DHS
7 wanted me domestically at Fort McCoy.

8 Q You referenced DHS. Can you tell me what that is?

9 A Department of Homeland Security.

10 Q So essentially you were asked to assist at Fort
11 McCoy on behalf of the Department of Homeland Security?

12 A Correct.

13 Q Now before we get into what your exact role was at
14 Fort McCoy, I wanted to just ask you some general
15 questions about this mission --

16 A Okay.

17 Q -- that you were asked to support. Is it fair to
18 call it a mission?

19 A Yes.

20 Q And can you tell me what that mission was called?

21 A Operation Allies Welcome.

22 Q And can you provide me a brief overview of what
23 Operations Allies Welcome was.

24 A So Operation Allies Welcome was basically the mass
25 whole of government effort, also with the assistance of

1 nongovernmental organizations, state and local, and
2 volunteer organizations to bring Afghanistan refugees and
3 U.S. citizens and their loved ones to the United States
4 for their protection from the situation in Afghanistan at
5 the time.

6 Q And what's your understanding of how Fort McCoy was
7 used or involved in support of this mission?

8 A So Fort McCoy was utilized as what we call a safe
9 haven, a housing facility until all immigration and other
10 issues were rectified to allow for full entrance into the
11 United States.

12 Q Is it fair to say then that people from Afghanistan
13 were being housed at Fort McCoy pending what you've just
14 explained?

15 A Correct.

16 Q Okay. And do you recall when, for lack of a better
17 word I'm going to use Afghani civilian or phrase, when
18 they arrived to Fort McCoy?

19 A I believe it was around the last week of August of
20 2021.

21 Q Now, do you have any reason -- do you have any
22 explanation for why Fort McCoy specifically was chosen to
23 house this population?

24 A Fort McCoy is used for a training facility and had
25 at the very least housing available in the form of

1 barracks and had previously a significant time in the
2 past served the same purpose for Cuban refugees.

3 Q Do you recall about how many Afghani civilians were
4 essentially housed at Fort McCoy during the beginning
5 part of this mission?

6 A Approximately 13,000.

7 Q And was this one influx? Was it in stages? How did
8 they arrive?

9 A In stages over, I would say, a week to two weeks,
10 that initial first week of August and first week of
11 September. But for a full influx, approximately 13,000
12 by the beginning of September.

13 Q From your understanding, did Fort McCoy, beyond
14 having barracks, did it already have infrastructure
15 needed for 15,000 foreign nationals?

16 A No.

17 Q About how long do you think or are you aware Fort
18 McCoy had to prepare for this massive influx of people?

19 A It was a very short turnaround. I would say, as
20 everything -- I mean everything that was unfolding in
21 Afghanistan, Fort McCoy had to be stood up within a week,
22 two weeks of the instant happening. So it was a very
23 short time.

24 Q I want to talk next about -- well, before I jump to
25 that, you did reference that part of the reason why these

1 Afghani civilians were housed at Fort McCoy was
2 essentially for the process of immigration.

3 A Yes.

4 Q What legal status, if any, did they have at Fort
5 McCoy while they were there?

6 A So they were granted admission into the United
7 States. So -- and while they were in Fort McCoy, they
8 were being processed for different additional visa
9 statuses that would give them more benefits. However,
10 they were admitted to the U.S. with a special immigration
11 status that allowed them to be present in the United
12 States.

13 Q So if someone wanted to leave Fort McCoy, an Afghani
14 civilian, were they able to?

15 A Yes.

16 Q Without any ramifications.

17 A Correct. They could freely leave. They were
18 allowed into the United States. They had immigration
19 status in the United States. It could have impacted
20 their special visa benefits or timeline for those
21 benefits if they did leave the base, but they could
22 freely leave the base.

23 Q So from a law enforcement perspective, if someone
24 wanted to leave, there was no, for example, a law
25 requiring their presence on the base.

1 A No.

2 Q Okay. I want to turn to your exact role. You
3 mentioned you were there in a law enforcement capacity.

4 A Correct.

5 Q Okay. And what exactly was your role?

6 A So my role was very similar to my day job. I'm
7 essentially, for my day job, I am my agency's law
8 enforcement liaison and coordinator to the State of
9 Wisconsin. So my job is to be liaison to federal, state,
10 local law enforcement throughout the state for whatever
11 reason. So if it's an incident, criminal investigation
12 response, if it touches my agency or the transportation
13 sector, my job is to be our agency's liaison and
14 interface with, for instance, FBI or HSI or state police.
15 I am the liaison.

16 So with that, I was sent on behalf of DHS, our
17 parent agency, to serve the same role, to essentially be
18 the one that interacts with the different law enforcement
19 entities that are on base and to make sure we are
20 coordinated and meeting the mission goals.

21 Q Why -- why would DHS or other agencies even be
22 involved at this point if this is a military base?

23 A So Operation Allies Welcome initially started under
24 the purview of DoD and Department of State while it was
25 in Afghanistan; however, domestically Department of

1 Homeland Security became the lead agency. So it became a
2 interagency, what's called a Unified Command Group, UCG,
3 where representatives from different parts of the federal
4 government led the mission, with DHS being the primary
5 leader because it was a domestic operation. So it fell
6 onto DHS to be the overall conductor; make sure that all
7 the different agencies provided the resources that were
8 needed and everyone was communicating and, you know,
9 following regulations and protocol.

10 Q So this kind of coordination and infrastructure you
11 referenced, was this something unique to this mission as
12 opposed to whether it already existed at Fort McCoy?

13 A No, this was a very unique mission. This was
14 unprecedented. Nothing like this had ever really
15 happened in modern times for DHS and the federal
16 government to deal with in this capacity. There is a
17 overarching incident command system, ICS, that basically
18 helps us coordinate and used standardized forms. But
19 beyond that, there's nothing. Nothing that was existing
20 before this.

21 Q So at least when it pertains to law enforcement at
22 the base for this mission, DHS was trying to build
23 essentially law enforcement infrastructure in support of
24 this mission.

25 A Correct.

1 Q And your role was to coordinate with all of these
2 different agencies.

3 A Correct.

4 Q Now turning to law enforcement, what's your
5 understanding of what law enforcement agencies would have
6 been responsible should there be a criminal investigation
7 at Fort McCoy?

8 A So the primary criminal investigative agency is FBI
9 because of federal -- exclusive federal jurisdiction,
10 it's federal land. The base has a static assigned law
11 enforcement agency, the Fort McCoy Police Department, and
12 Army Criminal Investigation Division, ACID, on the base.
13 However, they are geared more towards military members
14 and their normal small presence of military members that
15 are there. But FBI would be the primary criminal
16 investigative agency.

17 Q Now, are you aware whether FBI would have typically
18 staffed a number of agents on this military base outside
19 of Operation Allies Welcome?

20 A No, not normally. I mean my understanding is prior
21 to this, it's kind of an on call. There's federal
22 jurisdiction, it's handled by the FBI, but it's a
23 response capacity, not a static deployment.

24 Q So can you explain why the presence of, say, 15,000
25 civilians can change the law enforcement landscape at

1 Fort McCoy during Operation Allies Welcome?

2 A So the influx of 13,000 Afghan refugees basically
3 made a small city. It became the largest city in the
4 region and the local infrastructure base was completely
5 overwhelmed. So resources were called in, as I said,
6 from all of government to be able to deal with
7 everything. It's a humanitarian crisis. So it's similar
8 to a refugee camp overseas, but it was here in Wisconsin.
9 So we needed everything from not just FBI food personnel,
10 sanitary personnel, medical personnel, whole of
11 government lists responded to help deal with this
12 unprecedented influx.

13 Q I want to talk now about maybe some law enforcement
14 specific concerns during this mission. Were there any
15 perhaps unique features in criminal investigations during
16 this mission that perhaps might not be present if we're
17 dealing with just a military presence at the base?

18 A Yeah, definitely. I mean, first and foremost is a
19 language interpretation. The population did not speak
20 the same language among themselves. There are multiple
21 different languages. Some -- some of our guests, the
22 Afghan refugees, may have spoke one or two languages, and
23 others spoke completely different, and they were all in
24 the same location. So before every incident, the
25 responding law enforcement personnel had to ensure that

1 they had interpreters that spoke the correct language for
2 the victims and the subjects involved.

3 Q Now -- and kind of turning to the timeframe of
4 mid-September, say September 11, 12, 13. I mean, at this
5 point is it fair to say are there enough interpreters at
6 the base or is this meaningfully addressed? What's your
7 impression of that?

8 A At this point, no. It was -- that was very early on
9 in the mission. The personnel were still coming in.
10 Housing was still being established where everyone was
11 located, structure, resources. We were dealing with just
12 trying to get food and water and adequate resources for
13 basic living. And interpreters were also influx at the
14 time.

15 Q Now, were there any -- as the law enforcement
16 coordinator, was it essentially your responsibility to
17 kind of keep a beat on potential crime or safety issues
18 that might be cropping up during this mission?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q Are there any specific kind of safety forward or
23 safety-minded issues that were a concern with law
24 enforcement?

25 A Yeah, definitely. Just like any large city or large

1 even sporting event, you have a mass of humans, and with
2 that comes the matter of security concerns, personal
3 grudges. In this case, we had an influx of 13,000 Afghan
4 refugees that came from a war zone and were unpacking a
5 lot of trauma and a lot of experiences, so that was just
6 one aspect.

7 We had behavior health issues. There was -- we had
8 incidents where we had, you know, intertribal grudges
9 from Afghanistan that came with them to Fort McCoy. So
10 we had to keep a robust law enforcement security
11 presence, just like any large mass of humans.

12 Q Were there any specific concerns about perhaps
13 vigilante justice or maybe nonformal criminal justice
14 resolution within this population?

15 A Yes.

16 Q And can you explain that a little.

17 A So we had certain intertribal grudges, people that
18 were upset about wrongs that may have happened in
19 Afghanistan and now they're in the same location in a
20 refugee -- for lack of a better word -- refugee camp in
21 Wisconsin. So we had to be cognizant of those. And same
22 thing where, for instance, a family may have had a
23 marriage contract in Afghanistan and then they find
24 themselves in Wisconsin and the participants of that
25 contract did not want to follow through with it now that

1 they're in the United States. We would have family
2 members actually stalk or follow members of that contract
3 and try to force them to go through with it, which is an
4 issue. It's -- it was an example of the issues in
5 Afghanistan coming over to here that we had to be
6 cognizant of and watch. So there was a personal security
7 issue for them.

8 Q My last point or question on that point is whether
9 there were concerns that perhaps the Afghan -- Afghani
10 civilian population would respond to crime outside of
11 calling law enforcement or asking the military for
12 support.

13 A Yes. So there were concerns that personnel would
14 want to keep crimes internal so they could deal with them
15 internally rather than bring in outsiders, for lack of a
16 better term.

17 Q Now, with respect to a formal response protocol, as
18 the law enforcement coordinator, was there kind of a
19 chain of response that was expected to be followed if
20 there was a report of possible crime?

21 A Yes. So basically in an operation of this
22 magnitude, we wanted to keep it as simple as possible.
23 So all response protocol for each agency involved stayed
24 the same. They went over their internal response
25 protocol and we treated the base as essentially Any Town

1 USA. So say this was New York or Chicago, Chicago PD or
2 NYPD, encounter a subject suspected of a crime, they make
3 an initial detainment while the crime is being
4 investigated. And in this case, if it had a federal
5 nexus or FBI nexus, they would be called in to take over.
6 So we maintained that same structure. It's exclusive
7 federal territory, so local PD, Fort McCoy PD, responded
8 to this and then it gets referred to FBI.

9 Q And so that was the response for really any crime.

10 A Correct.

11 Q Okay. And to clarify, FBI was expected in most
12 cases to assume the investigation because this was under
13 a special or exclusive federal jurisdiction.

14 A Correct.

15 Q And that was your understanding as the law
16 enforcement coordinator.

17 A Yes.

18 Q And is this a plan that was communicated essentially
19 to the higher ups within this mission as well?

20 A Yes.

21 Q Okay. And that being the Department of Homeland
22 Security.

23 A Correct.

24 Q Okay. Now my last kind of questions,
25 Mr. O'Neill-Levine, have to do with the ability to either

1 keep guests safe or on the base. And you testified
2 earlier that someone could leave any time they chose.

3 A Yes.

4 Q Okay. So absent some sort of formal detention
5 either by law enforcement or military for some reason,
6 law enforcement was unable to make someone stay.

7 A Correct.

8 Q Okay. Was there any kind of ability for law
9 enforcement or other agencies within this mission to kind
10 of separate out people in order to maybe diffuse a
11 conflict?

12 A No. I mean there was no other special housing or
13 anything like that. If it was a criminal-related
14 incident, it was something where they're detained by law
15 enforcement while it's investigated.

16 Q So it's safe then to say there's not some ability
17 for Fort McCoy personnel, other agency government
18 personnel to essentially separate someone in a different
19 barracks or in some sort of quarantine?

20 A Not -- not for a criminal-related incident; correct.

21 Q Okay. Were you involved in the investigation of a
22 sexual assault involving a man named Bahrullah Noori?

23 A No.

24 Q Okay. Were you briefed on that investigation?

25 A Yes.

1 Q Okay. And based on what you know about that
2 investigation, was the law enforcement response what was
3 contemplated by the multiple agencies involved in this
4 mission?

5 A Yes.

6 MS. BLAIR: I would object to lack of
7 foundation.

8 THE COURT: Keep going.

9 MS. BLAIR: I don't believe that they've laid
10 out exactly what the protocol was and what information he
11 actually has. He said he wasn't involved, so I'd like to
12 know exactly what happened and then if that complied with
13 it. But his simply saying it complied with it without
14 exactly knowing what channels were notified, I don't
15 think it informs us of anything.

16 THE COURT: Understood. It's a fair question,
17 Ms. Kraus, but let's set it up like a hypothetical in a
18 tort case. Set forth all of your assumptions and then
19 ask Mr. O'Neill-Levine to respond with his opinion on the
20 hypothetical that you've given him, okay?

21 BY MS. KRAUS:

22 Q Mr. O'Neill-Levine, you referenced that Fort McCoy
23 was -- the police department was being used, kind of, as
24 a first response.

25 A Yes.

1 Q Okay. And then following that kind of initial
2 response, it was expected that the FBI would assume the
3 investigation.

4 A Yes.

5 Q Okay. Is that -- and then was there potential for
6 other law enforcement agencies, military or otherwise,
7 were they somehow involved?

8 A I mean every situation is different. In any initial
9 law enforcement response, for instance, on this base it
10 could have been security personnel or Army, uniformed
11 Army that is initial response and then calls the police
12 and then they call FBI. But the -- what was set up was
13 essentially, like I said, Any Town U.S.A. Fort McCoy PD
14 was the first response, and then FBI was essentially the
15 detective bureau, if this was Any Town U.S.A.

16 Q So if there was a report of a crime amongst Afghan
17 civilians, it could initially be reported by, as you
18 said, military personnel who are in charge of watching
19 the barracks.

20 A Correct. I'm sorry, could you repeat that?

21 Q So if there was -- in some instances, reports of
22 crime were actually reported by perhaps military
23 personnel that might be tasked with observing the
24 barracks.

25 A Correct, yes.

1 Q Okay. And it's your understanding that they would,
2 in turn, call Fort McCoy Police Department.

3 A Correct.

4 Q Because, as you said, that department was set up as
5 a first response.

6 A Exactly.

7 Q All right. And then following that chain you set
8 forth, FBI at some point would assume the investigation
9 because of the jurisdiction.

10 A Correct.

11 Q Okay. And so were you made aware of the order of
12 offense that occurred with respect to the investigation
13 of Bahrullah Noori?

14 A Yes.

15 Q Okay. And are you aware that that was a child
16 sexual assault investigation?

17 A Yes.

18 Q Okay. And do you know who was the first response to
19 that report?

20 A I don't recall specifically who was the direct. I
21 do know that Fort McCoy PD referred it to the FBI.

22 Q Would it surprise you, given the chain of command
23 and the response protocol you've set forth, if Fort McCoy
24 did actually provide some sort of first response duties?

25 A Yes, it would be completely normal for them to do

1 first response duties.

2 Q And would have been under this kind of protocol
3 that's set forth for Operation Allies Welcome, would it
4 be formal for Fort McCoy to make some of those first
5 investigative decisions and then turn it over to the FBI?

6 A Yes, completely normal, just like NYDP or Chicago
7 PD, same process.

8 Q Okay. I guess my final question,
9 Mr. O'Neill-Levine, is understanding that great efforts
10 were taken to organize law enforcement and other
11 infrastructure for Operation Allies Welcome in early
12 September, mid-September, is it fair to say that it was
13 still a very new process?

14 A Yes. Yes. Very, very new, yes.

15 MS. KRAUS: I don't have any further questions.

16 THE COURT: Understood. Cross-exam.

17 MR. BUGNI: Judge, could we have a minute?

18 THE COURT: You may. We need to switch
19 interpreters anyway. (12:16 p.m.)

20 **CROSS-EXAMINATION**

21 BY MS. BLAIR:

22 Q Good morning -- afternoon. Good afternoon.

23 A Good afternoon.

24 Q Sounds like based on your role here, you had some
25 familiarity with what was going on in Afghanistan?

1 A Yes.

2 Q And a lot of the refugees that were brought here
3 were brought here because they were facing violence in
4 Afghanistan.

5 A Correct.

6 Q And you're aware that police and law enforcement is
7 very different in Afghanistan than how it is here in the
8 United States.

9 A Yes.

10 Q And how it would be at Fort McCoy.

11 A Yes.

12 Q Out of the time that you were supervising OAW or
13 supervising your specific role, how many federal charges
14 do you believe were brought or how many Afghanis were
15 brought to federal court to be prosecuted?

16 A I believe we've -- during that timeframe, we had
17 three, two criminal and one immigration.

18 Q When you said "during that timeframe," what
19 timeframe are you referring to?

20 A OAW at Fort McCoy.

21 Q And what is that -- what are the months?

22 A I would say end of August 2021 through end of
23 February or early March 2022.

24 Q And when an official interpreter couldn't be used,
25 would law enforcement occasionally use someone from

1 Afghanistan who spoke English as well or someone who was
2 in the Army who also spoke Pashto or Dari?

3 A There were interpreters of both, contractors and
4 military members, and the military had set up a
5 availability or duty roster spread across all avenues of
6 the operation. So at least in my experience of just
7 pulling someone aside and saying hey, do you speak this
8 language didn't necessarily happen during the response.
9 There was a designated response for the law enforcement
10 that was there.

11 Q On this duty roster, approximately how many
12 interpreters were available to --

13 A It varied per timeframe. This was early on in the
14 operation, so -- I mean it would be a guess, but I would
15 say during this timeframe maybe a hundred would be a
16 ballpark, but spread across, you know, all avenues of
17 business. So you'd have behavior health, you'd have food
18 lines, you'd have medical appointments, complex -- I mean
19 you're essentially running a city with a population that
20 didn't speak the language. So...

21 Q That number of approximately a hundred is excluding
22 any refugees who were bilingual or close to bilingual.

23 A Yeah, I'm saying just official interpreters.

24 MS. BLAIR: I have no further questions. Thank
25 you.

1 THE WITNESS: Thank you.

2 THE COURT: Any redirect?

3 MS. KRAUS: No. Thank you.

4 THE COURT: All right. Well, thank you,
5 Mr. O'Neill-Levine. You're done. You're free to go
6 about your business.

7 THE WITNESS: Thank you, sir.

8 (Witness excused at 12:20 p.m.)

9 THE COURT: One more witness for the government?

10 MS. KRAUS: Yes. The government's last witness
11 is Special Agent Mark Meyers.

12 **MARK MEYERS, GOVERNMENT'S WITNESS, SWORN**

13 THE COURT: Agent, you've been present when I've
14 given the advisals to other witnesses so I will eschew
15 giving them to you.

16 THE WITNESS: Thank you, Your Honor.

17 **DIRECT EXAMINATION**

18 BY MS. KRAUS:

19 Q Can you please state your name.

20 A Mark B. Meyers.

21 Q How are you employed?

22 A By the Federal Bureau of Investigation.

23 Q What is your role within the Bureau?

24 A I'm a special agent.

25 Q How long have you been with the FBI?

MARK MEYERS - DIRECT

1 A About eight years.

2 Q And during that time, what kinds of investigations
3 have you been assigned to?

4 A Criminal investigations.

5 Q And has that always been in Wisconsin?

6 A No. I was first assigned to the Bemidji resident
7 agency, part of the Minneapolis field office. I worked
8 five-and-a-half years in Indian country doing violent
9 crime investigations.

10 Q During that time, did you have any experience
11 responding to sexual assaults?

12 A Yes.

13 Q And was there anything unique about your assignment
14 to that particular -- I believe you said reservation?

15 A Correct. It was a special -- federal special
16 jurisdictional land.

17 Q And what does that mean?

18 A Primarily major felonies or anything criminal was
19 investigated by the FBI.

20 Q Where are you currently assigned?

21 A I'm assigned to La Crosse resident agency.

22 Q And when were you assigned to that agency?

23 A June of 2020.

24 Q How many agents are assigned to that particular
25 division?

1 A It's a two-agent resident agency.

2 Q And what kinds of investigations or territory are
3 you assigned to investigate or cover as part of that
4 agency?

5 A Multiple counties across kind of southwest
6 Wisconsin.

7 Q And so would those two agents within that office be
8 responsible for investigation on behalf of the FBI for
9 that entire area?

10 A Correct, yes.

11 Q And how many state counties does that cover?

12 A I can't recall off the top of my head, it's nine or
13 eleven because we're changing. They're talking about
14 changing the counties. But there's lots; several.

15 Q And so it's fair then that you're responsible for
16 investigating any potential federal crime that falls
17 within FBI purview for that whole area.

18 A Yes.

19 Q I want to turn to September of 2021 or late August
20 2021. At any point were you assigned to a special,
21 either area within your general region or a special --
22 kind of like a special mission?

23 A So Monroe County is one of our counties, and the
24 Fort McCoy military installation resides completely in
25 Monroe County. And so we were notified that -- of

1 Operation Allies Welcome, and then I began attending
2 information briefings.

3 Q And what was the expectation at that point with
4 respect to you and your ability to investigate crime?

5 A It would remain the same, to do any kind of violent
6 crime or violent criminal investigation, anything that
7 met a federal nexus on special jurisdictional land. We
8 were to operate as normal, per se.

9 Q Now, outside of Operation Allies Welcome, does the
10 FBI maintain an office or presence at Fort McCoy?

11 A Just in a liaison. Unless there's an allegation of
12 a federal crime, it's just a response.

13 Q So typically it's fair to say that your
14 investigative involvement as it relates to Fort McCoy is
15 minimal.

16 A Correct.

17 Q Okay. And did your role in Operation Allies
18 Welcome, was there something different about the FBI
19 response in the context of Operation Allies Welcome?

20 A Yes. We're putting a large civilian population on a
21 military installation that is a special jurisdictional
22 land.

23 Q And that's just not a typical -- a typical
24 population when you're kind of going about the course of
25 your regular work, the FBI.

1 A Correct. When it kicked off, I held two roles. I
2 was to lead the criminal investigations, and then also in
3 a liaison, I guess liaison job with all the other federal
4 and local agencies that were there because it was a large
5 overtaking, something that doesn't happen very often.

6 Q So kind of talking about when you were first, I
7 guess, assigned to assist with this mission at Fort
8 McCoy, what was your understanding of how many federal
9 agents from the FBI would be present at Fort McCoy?

10 A That was in constant flux.

11 Q So let's talk about maybe early September. Do you
12 know how many agents were actually physically present at
13 Fort McCoy?

14 A It was either six or eight.

15 Q And were all of them responsible to respond to
16 criminal investigations?

17 A No. We had a large national security job there as
18 well.

19 Q So not all of the agents present at -- on the base
20 were involved in responding to reports of crime.

21 A Initially we started with two agents --

22 Q Okay.

23 A -- for responding to crime.

24 Q And around September 11, do you recall how many
25 agents you had up there at any given time to respond to

1 crime?

2 A Two.

3 Q And so can you explain for me what kind of hours you
4 were working at this time?

5 A I was working a lot of hours between all the liaison
6 meetings and stuff that needed to be done and then also
7 investigating and coordinating investigations. My
8 average day would range between 12 and 18 hours.

9 Q If the FBI determined there was a need for
10 additional agents, was there a system put in place for
11 you to request that help?

12 A Yes.

13 Q And can you explain that for me.

14 A We would have morning and evening briefings where
15 we'd talk over challenges, events, things that happened.
16 At that time, if we see an event happened and we needed
17 to coordinate to get extra bodies there or investigators
18 there, special agents to do interviews or canvases or
19 whatever may be, whether it was on the national security
20 side or on the criminal side, those morning briefs, we
21 would sit down and we would talk logistics of how can we
22 make this work and what other challenges are going on at
23 the time so we can try to facilitate accomplishing
24 everything.

25 Q If there was a need for additional FBI agents to

1 assist with criminal investigations, where were they
2 coming from?

3 A So this was a Midwest agent response and basically
4 we were pulling agents from Chicago field office,
5 Milwaukee field office, and Minneapolis field office.

6 Q And were they kind of on call or how did -- how did
7 you determine where these FBI agents were going to come
8 from?

9 A So that -- I didn't make that determination of where
10 they would come from. That was higher up the food chain.
11 I'm on the bottom level. When I see a need, I request it
12 and it gets filled as able. So I put in the request to
13 an on-site supervisor who was there and then they further
14 it up the change or up the chain to an assistant special
15 agent in charge from one of the field offices, who then
16 assigns personnel to respond.

17 Q So this was not a matter of you personally calling
18 other agents for additional help.

19 A That is correct.

20 Q Okay. I want to turn to September 11 of 2021. Now,
21 at this point in time, is it still these two FBI agents
22 assigned for criminal matters?

23 A Yes.

24 Q Okay. And do you recall if you were working on
25 September 11?

1 A Yes.

2 Q And do you recall what you were doing that day?

3 A The 11th, I was conducting a different criminal
4 investigation at the time.

5 Q And was this involving Afghanistan civilians?

6 A Yes.

7 Q Okay. At any point on September 11 were you made
8 aware of a sexual assault allegation?

9 A Yes.

10 Q Okay. About at what time?

11 A It was the early morning, and I believe I had -- it
12 was at the morning briefing when I was made aware of it.

13 Q I want to turn to Saturday, September 11, 2021,
14 specifically.

15 A Okay.

16 Q If there had been an arrest -- actually Agent
17 Meyers, I'm going to put on the screen some stipulations
18 here that might help you. I just want to make sure we're
19 talking about the same time here. May I approach?

20 THE COURT: You may.

21 BY MS. KRAUS:

22 Q Agent Meyers, I'm handing you what's been filed as
23 Docket No. 61. It's listed or it's titled "Joint
24 Stipulation of the Parties." Do you recognize this
25 document?

1 A Yes, I do.

2 Q Is this something that you reviewed prior to your
3 testimony today?

4 A Yes.

5 Q Okay. So I want to turn to that document where it
6 indicates a timeline for September 11 of 2021. What time
7 was there a report of a sexual assault?

8 A 8:15 p.m.

9 Q Okay. So understanding that the sexual assault
10 report was made at about 8:15 on September 11, were you
11 made aware of it that evening?

12 A I was not.

13 Q Okay. What were you doing that evening?

14 A I was conducting a separate investigation at that
15 time.

16 Q Okay. When were you made aware of this sexual
17 assault allegation?

18 A That would have been the following morning. So my
19 previous statement that I was made aware on the morning
20 of September 11 was not correct.

21 Q Okay.

22 A It would have been the following morning at the
23 morning brief that this incident had happened.

24 Q So when you testified earlier, again, you were made
25 aware earlier in the morning, you're referring to the

1 morning of Sunday, September 12th.

2 A That is correct.

3 Q Okay. Were you on base the evening of September 11?

4 A The evening, yes. The night, I don't believe so. I
5 believe I was at the hospital with a different case.

6 Q At any point did you -- did you leave the base or
7 kind of clock out and go home?

8 A Yes, I went home to sleep.

9 Q Okay. At that point, had you been working a normal
10 shift? Extended hours? Like what kind of timeline are
11 you working here?

12 A I don't recall the exact hours I worked that day,
13 but I was averaging about three to four hours of sleep
14 and then turning around and coming back.

15 Q Okay. So turning to the morning of Sunday,
16 September 12th, what were you told when you got in to
17 work that morning about this sexual assault
18 investigation?

19 A I was informed that there was allegations of a
20 sexual assault by an Afghan guest on two minors; that
21 Fort McCoy had taken him back to the police department,
22 and basically the criminal investigation was getting
23 referred to me.

24 Q Okay. And when you say it was referred to you, what
25 do you mean?

1 A It was getting turned over for me to organize to
2 make sure that the criminal investigation was completed.

3 Q As in were you assigned as the lead agent for that
4 investigation?

5 A The case agent; correct.

6 Q Okay. So it could be true that FBI might have been
7 made aware of this investigation or the case prior to
8 that morning, but that morning is when you personally
9 were assigned.

10 A That is correct.

11 Q Okay. And did you have any decision-making power
12 with respect to whether the FBI was even going to start
13 investigating this case or not?

14 A No.

15 Q Okay.

16 A No. That decision was already made the prior
17 evening.

18 Q So the prior evening, the FBI is already assuming
19 this investigation.

20 A Yes.

21 Q Okay. But it's not until Sunday, September 12th,
22 that you're assigned as the case agent.

23 A Correct.

24 Q And what does that mean?

25 A That means that I conduct the investigation,

1 facilitate making sure forensic interviews are organized,
2 requesting extra agents for interviews, to conduct
3 interviews making sure that the investigation is moving
4 forward.

5 Q Now, on Sunday, September 12th, was this the only
6 criminal investigation that you were working?

7 A No.

8 Q How many others were you working?

9 A There were a total of three open criminal
10 investigations at the time.

11 Q Now, when you were briefed of the fact that this was
12 a sexual assault of a child, what investigative steps did
13 you take first knowing that?

14 A The first thing I did was reach out to our child and
15 adolescent forensic interviewer because I knew they would
16 have to travel from Minneapolis. That's just -- that's
17 the one that's assigned for our area, so I reached out to
18 try to organize that. And then also I had to have
19 medical completed for the children.

20 Q Now, you mentioned you had to have a forensic
21 interviewer assigned through Minneapolis. Can you
22 explain that decision-making process for me?

23 A There's only a handful of child and adolescent
24 forensic interviewers that are assigned, and per policy
25 we have to call them to give them the opportunity to come

1 and conduct the child and forensic -- the child and
2 adolescent forensic interview. They can decline if they
3 just have a scheduling conflict and they just can't make
4 it, then we can reach out to a local family and children
5 center interviewer to conduct the interviews with the
6 children.

7 Q So just so I'm understanding, it's FBI policy that
8 you need to go through a specific, either office or
9 agency to arrange for forensic interviews.

10 A That is correct.

11 Q In this case, you contacted the Minneapolis office?

12 A I did contact the Minneapolis office. I contacted
13 the CAFI directly and she didn't return my phone call for
14 a few hours. She was still sleeping. And then when she
15 got up and received the call, she had a scheduling
16 conflict and couldn't make it. At that point, I reached
17 out to the Family & Children Center in La Crosse. They
18 were unable to help facilitate an interviewer. And then
19 I started reaching farther out and ended up finding a
20 forensic child interviewer out of Dane County, which just
21 so happens to be a task force officer for the FBI.

22 Q But you first needed to get that declination from
23 the official kind of --

24 A Correct.

25 Q -- child and forensic interviewer. Now, in addition

1 to finding a forensic interviewer, were there any other
2 considerations or steps you had to take with respect to
3 forensic interviews in this sexual assault investigation?

4 A Finding an interpreter.

5 Q Can you explain that.

6 A We have to call -- we were given a number to call.
7 Basically we'd call in to the operations center and say
8 we have a need for a forensic -- or an interviewer, an
9 interpreter to help assist for a forensic interview.
10 That call wasn't initially returned right away. However,
11 we had to work in schedule because the interpreters were
12 stretched out on pretty much everything as well. So we
13 had to wait for an interpreter to be available and
14 coordinate that with when our forensic interviewer could
15 do the interview.

16 Q Did you participate either directly or observe the
17 forensic interviews?

18 A Initially I think I was in and out. There was a lot
19 going on at the time. I had observed maybe a minute or
20 two of it and then I was in and out of the observation
21 room doing other coordination for other investigations.

22 Q And at this point -- you can refer to the
23 stipulations in front of you if it's helpful -- do you
24 recall about what time you were actually able to get the
25 forensic interviews arranged?

1 A It was on that Sunday. It was about 1:50 p.m.

2 Q Now, beyond the forensic interviews which you were
3 able to arrange for that time, was there other either
4 investigative steps or administrative steps you were
5 taking in connection to this investigation on that day?

6 A For the forensic interview we needed a soft room,
7 and there was no video audio recorded soft room for it.
8 And so we had to coordinate with CID -- or I mean
9 Criminal Investigative Division to set up a new soft room
10 essentially.

11 Q Can you very briefly, what is a soft room?

12 A Soft room is more child friendly, in the least
13 amount of words. I guess instead of a table and chairs,
14 you have a couch. And it's just more of a living room
15 setting instead of an interview room.

16 Q And from your perspective as the lead agent, why did
17 you focus your initial efforts on arranging for -- I'm
18 just going to restart the question. As the lead agent,
19 why did you focus your kind of initial investigative
20 steps in this case on the forensic interviews?

21 A Without the information from the victims, the
22 alleged victims, there's not a lot to talk about with the
23 suspect or the alleged suspect.

24 Q And from your perspective, were the initial
25 interviews conducted by the Fort McCoy Police Department

1 sufficient for that?

2 A Just an overview. There's no details to find out
3 whether something actually happened or not, it was all
4 alleged at the time and you want to dig down and get as
5 much information as you can.

6 Q Following the forensic interviews, did you do
7 anything else related to this investigation on that
8 Sunday, the 12th?

9 A Yes. I was trying to coordinate getting child SANE
10 exams completed as well.

11 Q You said SANE exams. Can you tell me just what that
12 means?

13 A Sexual Assault Nurse Examiner kits completed on the
14 children.

15 Q Was that something that could have been done at Fort
16 McCoy?

17 A No.

18 Q And did you need to bring the children essentially
19 off base?

20 A Yes.

21 Q And was that as simple as putting them in a car and
22 taking them?

23 A No.

24 Q Can you explain that for me.

25 A There's procedures we had to go through for that,

1 because essentially we were taking them out of an
2 immigration process to take them basically off post and
3 we needed interpreters to interpret for the SANE
4 examiner. And then also we had to take them to Gundersen
5 Lutheran, where it was either Gundersen Lutheran in
6 LaCrosse or we'd have to travel down to Children's in
7 Madison. Those were the only two locations where child
8 SANE nurse examiners were available.

9 Q While you're focusing on first the forensic
10 interviews and then these SANE exams, you mentioned there
11 was a second criminal agent on base. What was he doing
12 in connection with this?

13 A He was conducting the other investigation, and there
14 were multiple -- just because we had three open criminal
15 investigations at the time doesn't mean we weren't
16 getting more referrals and calls and other cases to
17 review to see if they were something we needed to take.

18 Q At this point, realizing that you're inundated, did
19 you make a request for additional FBI agents to respond?

20 A Yes. At the Sunday morning brief, I requested right
21 away because I knew we needed to interview the children
22 and I also knew we needed to interview the subject. And
23 so I requested agents for that.

24 Q You were aware the subject was in custody at this
25 time.

1 A Yes. At the Fort McCoy Police Department, yes.

2 Q And you also determined that he needed to be
3 interviewed.

4 A Yes.

5 Q Okay. Were you able to interview him that day?

6 A No.

7 Q And was this other agent -- that other agent decided
8 not to interview him either?

9 A No. He was -- he was responding -- the other agent
10 was responding to other calls and weeding out whether we
11 needed to investigate those, and then also trying to
12 follow up on the other case that had just been opened, I
13 believe the day before or two days before.

14 Q And was the subject of that other investigation also
15 in custody?

16 A Yes.

17 Q Okay. And you were involved in that investigation.

18 A Yes.

19 Q Okay. Were there other kind of special conditions
20 in that case, like a forensic interview that needed to be
21 done?

22 A There was medical examinations and a forensic
23 interview on both of those cases, yes.

24 Q Were you coordinating those steps in that
25 investigation in addition at the same time as this

1 investigation?

2 A Yes.

3 Q Okay. Do you know if the FBI approved for
4 additional agents to come up to assist you?

5 A They did.

6 Q When did those agents arrive?

7 A Late Sunday night.

8 Q And was it your understanding that one of those
9 agents would interview the subject of this investigation,
10 Mr. Noori?

11 A Yes, yes. It would probably be more likely it would
12 be two agents that would conduct the interview, but yes.

13 Q Do you recall what time you completed your
14 assistance with the SANE exams at the hospital with the
15 kids?

16 A It was just before midnight. I don't believe we got
17 to the hospital and began the first one until ten
18 o'clock, I believe.

19 Q Okay. And then following that, did you go home and
20 sleep?

21 A Yes.

22 Q The following morning, Monday, September 13th, I
23 believe, that Monday, when did you respond to Fort McCoy?

24 A For the morning brief.

25 Q And at that time did you see the other agents that

1 were sent to assist you?

2 A Some of them, yes.

3 Q And at that time, were they essentially briefed on
4 the need to interview Mr. Noori?

5 A Yes.

6 Q Okay. Were you a part of that interview at all?

7 A I was not.

8 Q Did you have any decision-making -- decision-making
9 with respect to that portion of the investigation?

10 A No.

11 Q Okay. At what point did you begin working with the
12 U.S. Attorney's Office on drafting a criminal complaint
13 in connection to this investigation?

14 A Sunday, the 12th, in the afternoon.

15 Q And this was before the interview of Mr. Noori?

16 A That is correct.

17 Q Okay. When did this process finish? As in when did
18 you actually obtain a signed criminal complaint and
19 warrant from a judge.

20 A It was Monday. Give me a second, please. It was
21 2:16 p.m. on Monday, September 13th.

22 Q And so up until -- so between the time that you
23 began working on this complaint with the U.S. Attorney's
24 Office, you said that started at some point on Sunday.

25 A Correct.

1 Q Okay. And was this process as simple as sending a
2 complaint or an affidavit to the U.S. Attorney's Office
3 or were there multiple revisions and discussions about
4 it?

5 A There were multiple, but it wasn't just as simple as
6 providing the reports. The incident had happened the
7 night prior, on Sunday, so the police officers that were
8 working that shift, some of them didn't have their
9 reports completed and/or approved and so we had to wait
10 until we had the physical reports so that I could forward
11 them on to the U.S. Attorney's Office.

12 Q Did you feel it was important to complete the
13 forensic interviews before complaints and affidavit was
14 finalized?

15 A Yes.

16 Q Why?

17 A As I said before, that's where the information is.
18 You get it from the victims. You see what they have to
19 say.

20 Q So you said that you obtained the complaint at about
21 2:16 p.m. When did you receive the arrest warrant?

22 A 3 p.m.

23 Q And what did you do with it?

24 A I immediately forwarded the email to Special Agent
25 Peter Reist, who was conducting the interview of

1 Mr. Noori.

2 Q So it's fair to say that charges against Mr. Noori
3 were not filed until 2:16 p.m.

4 A That is correct.

5 Q And you did not receive an executable warrant until
6 3 p.m.

7 A That is correct.

8 Q Were you on base at that time when you received that
9 warrant?

10 A Excuse me. I don't believe I was on base. I
11 believe I was in my office in La Crosse. I had to
12 process the evidence and make sure it got out in FedEx
13 that I picked up that morning.

14 Q So you yourself could not execute this warrant.

15 A No.

16 Q I want to turn to the criminal Complaint. I'll put
17 that on the screen for you. This is marked as Exhibit --
18 government Exhibit 13. Scroll down so that you can see
19 the sticker here from Exhibit No. 13.

20 You had a chance to review this complaint?

21 A Yes.

22 Q Okay. And this is the same complaint that you
23 actually drafted. Sorry, one second. Okay. And is
24 there any reference to statements made by Bahrullah Noori
25 in this criminal Complaint?

1 A No.

2 MS. KRAUS: I don't have any further questions.

3 THE COURT: Cross-exam.

4 MS. BLAIR: Yes, Your Honor (12:51 p.m.)

5 **CROSS-EXAMINATION**

6 BY MS. BLAIR:

7 Q Good afternoon, Agent.

8 A Good afternoon.

9 Q I want to go back through the timeline a little bit.
10 Do you still have the joint factual stipulation of the
11 parties in front of you?

12 A Yes, I do.

13 Q All right. Great. You stated that you were made
14 aware of this investigation into Mr. Noori at your
15 morning briefing?

16 A That is correct.

17 Q What time does your morning briefing take place?

18 A It was either -- that time kept changing too. It
19 was either 7 or 7:30 or 8 o'clock. I believe at that
20 time we were meeting at 7 or 7:30 a.m.

21 Q Okay. So you were made aware sometime between 7 and
22 8 a.m.

23 A Yes.

24 Q However, the FBI generally was contacted before that
25 about the investigation.

1 A We had an on-call phone that Fort McCoy dispatch
2 would call, yes.

3 Q And dispatch is actually called at 9:23 p.m. on
4 Saturday.

5 A That is correct.

6 Q Okay. So they're alerted much before you.

7 A Yes.

8 Q We spoke a lot about the different steps you needed
9 to take to be able to interview the children. Do you
10 remember that?

11 A Yes.

12 Q You had to get a room together, get an interpreter
13 together, all those things.

14 A That is correct.

15 Q And the interview of the children starts on Sunday
16 at 1:50 p.m.; correct?

17 A Yes.

18 Q And that interview is finished by the early
19 afternoon.

20 A I don't believe I was there when it was finished.

21 Q It didn't take five hours or six hours.

22 A It was completed on that afternoon, yes.

23 Q Okay. Now, as an FBI agent, you're trained in
24 different aspects of federal law?

25 A Yes.

1 Q And federal law that applies specifically to
2 criminal defendants.

3 A Yes.

4 Q And one of the rights that a criminal defendant has
5 is the right to prompt presentment.

6 A Yes.

7 Q Or that he be brought before a magistrate judge
8 promptly; correct?

9 A Yes.

10 Q And part of that law is that someone may be held six
11 hours and then the FBI cannot interview them absent
12 special circumstances.

13 A There is a law, yes.

14 Q And you were trained on that --

15 A Yes. The six-hour rule, yes.

16 Q -- during your FBI training. Just to finish the
17 question. Okay.

18 And Mr. Noori is interviewed over 40 hours since his
19 initial arrest; correct? Approximately 40 hours since
20 his initial arrest.

21 A I guess I didn't run the hours, but yes. It was --
22 he was interviewed on Monday afternoon.

23 Q Yes. And the FBI has actually a waiver that someone
24 can sign saying I waive my right to prompt presentment.

25 A I believe that would be a Department of Justice

1 waiver.

2 Q You're aware that a defendant may waive their right
3 to prompt presentment.

4 A Yes.

5 Q And that was not done in this case, a waiver was not
6 presented to Mr. Noori.

7 A No.

8 Q One wasn't written up and translated for him or even
9 spoken to him; right?

10 A Correct, not to my knowledge. I was not there
11 during the interview, but that was not brought up.

12 Q The interview was audio and video recorded and you
13 reviewed that video recording.

14 A Yes.

15 Q And it's not present in that recording.

16 A That is correct.

17 Q Now, we spoke about the importance of interviewing
18 the children. Did you interview the father or uncle of
19 the children?

20 A I don't believe in that case I interviewed either
21 one. It was a while ago, so I don't know if I -- I -- I
22 don't believe I conducted any interviews in this case on
23 my own. I believe those were all assigned out.

24 Q Are you aware of anyone interviewing the father or
25 uncle of the two complaining -- alleged victims?

1 A Yes, I believe Fort McCoy PD did.

2 Q Who at Fort McCoy PD?

3 A I can't recall the officer.

4 Q If you had been present for this interview, you
5 would have created a report?

6 A If I was conducting the interview, I would have
7 created a report, yes.

8 Q I have a clarifying question about something that
9 you mentioned on direct where you were talking about the
10 importance of having a forensic interviewer interview the
11 children based on the nature of the case. You stated
12 that someone from Fort McCoy wouldn't be enough per
13 protocol. Are you aware if someone from Fort McCoy did
14 interview the children about what happened? And please
15 clarify if I got it wrong.

16 A I guess I'm confused on why you'd say Fort McCoy
17 wouldn't be enough. I guess I don't understand.

18 Q That you would want someone with special training to
19 interview the children and so you waited until that
20 person got in. Someone from Fort McCoy police would not
21 be proper procedure.

22 A Per our policy, we have to go through our CAFI, and
23 then also from our CAFI, they give us -- these are the
24 approved interviewers you would use. And we did not have
25 someone from Fort McCoy, no.

1 Q And obviously someone arrived before the children
2 were interviewed on that Sunday.

3 A Yes.

4 Q My question is, though, did the children give any
5 statement to anyone that you're aware of before that
6 forensic interview?

7 A Not that I can recall.

8 Q You have been present the entire time we've had the
9 hearing, correct, as the case agent?

10 A Correct.

11 Q And so do you recall when Officer Schwartz was
12 speaking?

13 A Correct.

14 Q And Officer Schwartz gave testimony to the effect
15 that Mr. Noori had given a statement to him saying that
16 in his country, it may be legal to do this with children,
17 after Mr. Noori asked him a question about why am I here.
18 Do you recall that testimony?

19 A Yes, I do.

20 Q And during that time, Officer Schwartz also told him
21 that you're here for a sexual assault of those children.

22 A Yes.

23 Q Okay. When was the first time you heard that
24 statement?

25 MS. KRAUS: I'm going to object to relevance

1 here.

2 THE COURT: I'm going to let her make a record
3 here. We can always strike it later.

4 THE WITNESS: Weeks later.

5 BY MS. BLAIR:

6 Q In what context?

7 A It wasn't until, I want to say prepped for this that
8 we -- that I was told about those statements by Officer
9 Schwartz.

10 Q During prep when you heard this statement, was the
11 Assistant United States Attorney present?

12 A Yes, I believe -- yes.

13 Q Were any other statements made allegedly from
14 Mr. Noori, aside from that --

15 A Not that I'm --

16 Q -- recorded interview?

17 A Not that I'm aware of.

18 Q Regarding that statement, was a report generated as
19 far as -- to your knowledge?

20 A No, not to my knowledge.

21 Q Why wouldn't a report be generated?

22 A I wasn't present at the time. Officer Schwartz was
23 and he could have done a supplement.

24 Q I'm sorry, I think I misunderstood. I thought that
25 you were present in the room at the same time Officer

1 Schwartz gave a statement. But that's incorrect.

2 THE COURT: You're talking past each other.

3 MS. BLAIR: Yes.

4 THE COURT: You're asking about the prep
5 meeting. Why was -- why did you not make a report of
6 what you learned from Sergeant Schwartz at the prep
7 meeting? Am I asking the question correctly?

8 MS. BLAIR: Yes.

9 THE WITNESS: Oh. Because Officer Schwartz is a
10 sworn law enforcement officer. He could have completed a
11 report.

12 BY MS. BLAIR:

13 Q That wouldn't be your job.

14 A Correct. I mean he could have followed up with a
15 report.

16 MS. BLAIR: I have no further questions. Thank
17 you.

18 THE WITNESS: Thank you.

19 THE COURT: Did you wish to redirect?

20 MS. KRAUS: I want to clarify for the record.
21 When you say CAFI, are you referring to a Child
22 Adolescent Forensic Interviewer?

23 THE WITNESS: Yes.

24 MS. KRAUS: Okay. I don't have any further
25 questions.

1 THE COURT: Agent, you're done. You may resume
2 your seat.

3 THE WITNESS: Thank you, Your Honor. What would
4 you like done with this?

5 THE COURT: Just leave it right there.

6 MS. KRAUS: That's my copy. Thank you.

7 (Witness excused at 1:01 p.m.)

8 THE COURT: Okay. So let's clarify where we
9 find ourselves. Ms. Kraus, does that conclude the
10 government's presentation of witness testimony in
11 response to the motion?

12 MS. KRAUS: Yes.

13 THE COURT: Okay. Understanding that you
14 reserve the right, perhaps, to call rebuttal witnesses
15 after the defense witnesses testify, are you resting for
16 the purpose of your direct response in terms of making an
17 evidentiary record?

18 MS. KRAUS: I am.

19 THE COURT: Very well. All right. So
20 Ms. Blair, looking ahead to tomorrow, we're going to
21 proceed as planned. You've got your witnesses lined up.
22 I believe we've starting at nine. Probably finish in the
23 morning?

24 MS. BLAIR: I hope we will finish in the
25 morning, Your Honor. I think there might be some

1 translation issues, both with the judge as he's
2 testifying and if Mr. Noori decides to testify. It just
3 might be a little slower than how it is here, but yes, we
4 should finish.

5 THE COURT: I only ask for calendaring purposes.
6 You get as much time as you need. We won't end
7 artificially, we'll just see how it goes and if the Court
8 has to change other things, we will do that. But we are
9 not going to look for trouble today.

10 And then tomorrow, we will set the rest of the
11 schedule, assuming that we complete the evidentiary
12 record and close the record on the motion tomorrow
13 afternoon. But let's wait and make sure that actually
14 happens.

15 With that, I believe we're done for today, but let's
16 double-check. It's a defense motion. Anything else
17 today on any topic before we adjourn today?

18 MR. BUGNI: Two things, Your Honor. Can we just
19 talk? Can I talk with Ms. Blair for a minute?

20 THE COURT: Yes.

21 (Pause 1:03-1:04 p.m.)

22 MR. BUGNI: Your Honor, just two brief things.
23 So we had never heard Officer Schwartz's statement, as
24 was pretty evident. We need to reevaluate if we want to
25 put Mr. Noori on the stand. You know, normally it would

1 just be is this your affidavit, did you review it, did
2 you go over it, did you sign it, da-da-da. And we would
3 let the Court know and Ms. Kraus by 7 p.m. tonight if we
4 decide to call off our portion of the evidentiary
5 hearing. We just want to make sure that we make a valid
6 decision and an informed decision. We also want to talk
7 to Mr. Noori about what the ramifications of those
8 decisions are. So that's the first thing, Your Honor.
9 We'll let the Court know if we're not going to go forward
10 with that.

11 The second thing is I don't know if we have to
12 supplement for a motion to suppress a statement that we
13 only heard from the first time -- for the first time
14 today at court. You know, there's no 302 made of it. No
15 report made of it. So I think that's one small thing
16 that we'd have to do. It's very clear he's in custody at
17 that point, it doesn't seem as clear whether or not it
18 was of a interrogatory statement, you know, given the
19 fact that it's not -- sorry, not in Pashto and we don't
20 really know what was communicated. But that's something
21 I want to flag for the Court that we would make a quick
22 decision on. But I'm just putting it out there for you.

23 THE COURT: Sure, you're entitled to that. I
24 mean there are potential Rule 16 problems here as well.
25 A lot of wheels have started to turn. Where they take us

1 we can determine, but I appreciate the heads up on that.
2 And as for whether or not to call your client, Mr. Noori,
3 tomorrow, I'll leave that to you to let Ms. Kraus know.
4 And that doesn't really affect the Court. As I already
5 said to Ms. Blair, we go until you're done.

6 MR. BUGNI: Sure.

7 THE COURT: Either that involves Mr. Noori's
8 testimony or it does not. You're the masters of your own
9 case in that regard.

10 MR. BUGNI: Sure. Same. We're going to give
11 everybody, including Ms. Kraus and the Court so that way
12 for calendaring purposes, you'll know tonight what you
13 can plan for --

14 THE COURT: Okay.

15 MR. BUGNI: -- as far as that goes.

16 THE COURT: Fair enough. Just to make clear,
17 it's not a big deal to the Court. We throw civil
18 telephonic pretrials off the calendar all the time. I
19 would be happy to do that tomorrow if I had to.

20 MR. BUGNI: Thank you, Your Honor.

21 THE COURT: Anything else?

22 MR. BUGNI: No, Your Honor.

23 THE COURT: All right. Anything else today on
24 behalf of the government?

25 MS. KRAUS: No. Thank you.

(Proceedings concluded at 1:06 p.m.)

* * * * *

I, LYNETTE SWENSON, Certified Realtime and Merit Reporter in and for the State of Wisconsin, certify that the foregoing is a true and accurate transcription of the proceedings held on the 24th day of October 2022 before the Honorable Stephen L. Crocker, District Magistrate Judge for the Western District of Wisconsin.

Dated this 13th day of November 2022.

/s/___Lynette Swenson_____

Lynette Swenson, RMR, CRR, CRC
Court Reporter

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